

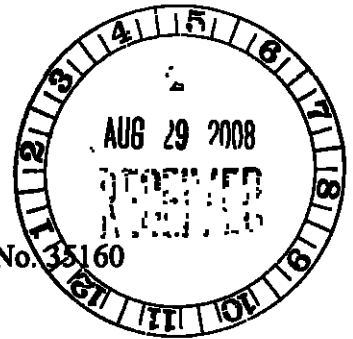
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PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Oregon International Port of Coos Bay – Feeder Line
Application – Coos Bay Line of the Central Oregon &
Pacific Railroad, Inc.

Finance Docket No. 35160



**RESPONSE OF CENTRAL OREGON & PACIFIC RAILROAD, INC.
TO FEEDER LINE APPLICATION**

ENTERED
Office of Proceedings

AUG 29 2008

Part of
Public Record

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I. INTRODUCTION

The Central Oregon & Pacific Railroad, Inc. ("CORP") respectfully submits this Response to the Oregon International Port of Coos Bay's ("Port's") Feeder Line Application ("Application") for authorization to acquire CORP's line of railroad between Milepost 763.130 near Cordes, Oregon and Milepost 652.114 near Danebo, Oregon ("Coos Bay Subdivision" or "Line"). As the Board knows, CORP is currently seeking abandonment authority for the 94-mile portion of the Coos Bay Subdivision between Milepost 669.0 near Vaughn, Oregon and Milepost 763.13 near Cordes, Oregon (the "Abandonment Segment"). See Docket No. AB-515 (Sub-No. 2). CORP is willing to sell that portion of the line—and the portion of the Coos Bay Subdivision between Milepost 669.0 near Vaughn and Milepost 652.114 near Danebo (the "Vaughn-Danebo Segment")—to the Port or another party who may come forward in the abandonment proceeding, so long as the purchaser compensates CORP for the constitutional minimum value of the line. It is on this point that CORP principally objects to the Port's Application in this proceeding. While the Port has represented that it has amassed considerable financial resources (totaling more than \$31 million) to acquire, rehabilitate and operate the Line, and that it is "willing to spend its last dime on saving rail service,"¹ its Application offers to pay only \$9,811,100 – a mere fraction of the actual Net Liquidation Value ("NLV") of the Line. Indeed, the Port's actual offer is even less than the cut-rate price it offers, because the Port asks the Board to take the unwarranted and unprecedented step of requiring CORP to perform (or to pay for) millions of dollars of tunnel repairs before selling the Line to the Port. In this Response, CORP presents a reasonable, conservative estimate of the NLV of the Line that is well-supported by the evidence—including actual offers to purchase the track assets on the Line at fair market prices that dwarf the

¹ Supplemental Verified Statement of Jeffrey Bishop at 10.

estimated values for those assets claimed by the Port. The Board should adopt CORP's NLV evidence and reject the Port's grossly understated NLV estimate.

As noted above, the Board is considering the Port's Application concurrently with CORP's pending application for authority to abandon the Abandonment Segment in AB-515 (Sub-No. 2).² On September 21, 2007, CORP embargoed portions of the Coos Bay Subdivision south of Vaughn, Oregon because of unsafe conditions in three tunnels on the Line. CORP's safety concerns were based on multiple timber set failures and rock falls, the collapse of one of the tunnels during repairs, and a detailed report by an expert geotechnical firm. Immediately after the embargo, CORP's judgment that the condition of the tunnels warranted an embargo was confirmed by the Federal Railroad Administration ("FRA"). Subsequent to the embargo, CORP negotiated with shippers and state government officials for several months in an attempt to secure funding that would both enable tunnel repairs and alleviate the significant operating losses on the Line. When it became clear that CORP would not be able to forge a partnership of interested stakeholders to preserve service over the line, CORP initiated the abandonment process. CORP's abandonment application was filed on July 14, 2008 and is currently pending before the Board.

The Port's Application provides further support for CORP's application for abandonment authority. The Port and CORP agree that the Line is not financially profitable and has no value as a going concern. According to the Port, CORP's operating costs on the Line "substantially

² While there is considerable overlap between the rail lines at issue in the two proceedings, they involve somewhat different lines. In particular, the Port's Feeder Line Application seeks authority for a forced sale of the Vaughn-Danebo Segment—a line that was not embargoed, that CORP continues to serve, and for which CORP is not seeking abandonment authority. In addition, CORP's Application in AB-515 (Sub-No. 2) seeks authority to discontinue service over portions of the Coos Bay Subdivision that CORP leases from Union Pacific Railroad Company ("UP"). That requested discontinuance of service is not implicated by this Feeder Line proceeding.

exceed its revenue” (Application at 23) and “the Line is clearly uneconomic.” (*Id.* at 27). CORP agrees with that assessment, and for those reasons it should be granted authority to abandon the line. As the ample authority cited in CORP’s abandonment application and long accepted by the Board makes clear, “a carrier cannot be compelled to carry on even a branch of business at a loss.” *Brooks-Scanlon Co. v. R.R. Comm’n of La.*, 251 U.S. 396, 399 (1920) (Holmes, J.); *see also Purcell v. United States*, 315 U.S. 381, 385 (1942) (if costs “cannot be justified in terms of the reasonably predictable revenues, . . . the expenditures are wasteful” and contrary to “a stated purpose of the Transportation Act”), *quoted in Meyer v. N. Coast R.R. Auth.*, STB Fin. Docket No. 34337 (served July 27, 2005) (“a carrier cannot legitimately be required to expend money to rehabilitate a line where it will lose money on the operation”); *Gibbons v. United States*, 660 F.2d 1227, 1233 (7th Cir. 1981) (“[A] railroad cannot be compelled to continue unprofitable operations indefinitely.”). Indeed, the Supreme Court has held that “to compel [a railroad] to go on at a loss” would effect an unconstitutional taking of property. *R.R. Comm’n of Tex. v. E. Tex. R. Co.*, 264 U.S. 79, 85 (1924).

CORP is willing to sell the Coos Bay Subdivision to the Port or to another offeror. But such a sale must be for no less than the constitutional minimum value of the Line. While it has represented that it has the ability to secure over \$31 million in funds, the Port has grossly understated the NLV of the Line. If the Port wishes to acquire the Line, both § 10907 and the Constitution’s prohibition on takings without just compensation require the Port to pay what the line is worth.

The Port has underestimated the NLV of the Coos Bay Subdivision in two ways. First, the Port has vastly understated the value of the underlying real estate. The appraisal of Port witness DeVoe is based upon “theories” and “methodologies” that have no basis in appraisal

literature and appear to have been concocted solely for this litigation in order to arrive at the lowest possible NLV estimate. As demonstrated below, the Port's estimate of the NLV of the real estate—only \$910,000 for all of the land along the 111-mile length of the Coos Bay Subdivision right-of-way—is simply not credible. In contrast, CORP has presented the well-supported appraisal of an experienced appraiser whose conservative estimate of the NLV of the real property on the line is []. CORP's well-documented estimate should be accepted over the Port's appraisal, which is premised on the notion that vast swaths of forested, waterfront and residential land in Western Oregon are "worthless."

Similarly, the Port has substantially understated the value of the track assets on the Line. The Port's analysis suffers from several fundamental flaws, including a failure to account for current metals prices; a misclassification of the amount of track that can be used as higher-value relay material; and a significant overstatement of bridge removal costs. CORP's estimate of track asset value corrects these errors, and is supported by several independent, arms-length third-party offers to acquire and salvage the track assets on the Line. The highest of these offers is []. The fact that CORP has secured actual purchase offers for the track assets on the Line from multiple third parties that are approximately double the Port's estimated value for those assets is compelling evidence that the Port's valuation is unreliable.

The NLV of the Coos Bay Subdivision is []. The Board may not authorize a forced sale of the Line for anything less than this constitutional minimum value

II. LEGAL STANDARD

The Board's determination in this proceeding requires it to decide three basic questions; whether the Port is a financially responsible person, whether the Line is eligible for forced sale, and what is the minimum constitutional value of the Line. First, to grant the Port's Application the Board must find that it is a "financially responsible person" that is both "capable of paying

the constitutional minimum value of the railroad line proposed to be acquired” and “able to assure that adequate transportation will be provided over the line for a period of not less than 3 years.” 49 U.S.C. § 10907(a). If rehabilitation of the line is necessary prior to commencing operations, as it is here, the Port must demonstrate that it is financially capable of undertaking such rehabilitation. *Forty Plus Found—Feeder Line Acquisition—Manhattan Highline*, STB Fin. Docket No. 34606, 2005 WL 156801, at *2 (Jan. 25, 2005) (decision of the Director rejecting application as incomplete), *aff’d*, Fed. Carr. Cas. ¶ 37191, 2005 WL 1389354 (June 13, 2005).

The Board must also find that the Line is eligible for forced sale, which requires evidence that it was either designated in Category 1 on CORP’s system diagram map or that the “public convenience and necessity” require or permit the forced sale. *Id.* § 10907(b)(1). While the Abandonment Segment was placed in Category 1 on CORP’s System Diagram Map on May 8, 2008, the Vaughn-Danebo Segment was not designated as Category 1 track. Therefore, a finding of “public convenience and necessity” is required for the Danebo-Vaughn segment.³ *Id.* § 10907(c)(1).

Finally and most critically, a person acquiring a line pursuant to § 10907 must pay the carrier no less than the constitutional minimum value of the line. *See Sandusky County—Feeder Line Application—Consol. Rail Corp.*, 6 I.C.C.2d 568, 570 (1990); *see also San Pedro R.R. Operating Co.—Abandonment Exemption—in Cochise Cty, AZ*, STB Docket No. AB-1081X, 2006 WL 963539, at *3 (Apr. 13, 2006) (“the Board may not set a price that is below the fair market value of the line”); *San Joaquin Valley R.R. Co.—Abandonment Exemption—in Tulare*

³ As discussed further below, CORP does not agree that public convenience and necessity require the forced sale of the Vaughn-Danebo Segment, but will not contest the inclusion of that segment in the sale if the Port’s Feeder Line Application is approved.

Cty, CA, STB Docket No. AB-398 (Sub-No. 7X), slip op. at 3 (Aug. 25, 2008) (hereafter “*SJVR*”) (same). As the Supreme Court has explained, anything less would be an unconstitutional taking of the rail carrier’s property. *See R.R. Comm’n of Tex. v. Eastern Tex. R.R. Co.*, 264 U.S. 79, 85 (1924) (“If at any time it develops with reasonable certainty that future [rail] operation must be at a loss, the [railroad] may discontinue operation and get what it can out of the property by dismantling the road. To compel it to go on at a loss or to give up the salvage value would be to take its property without the just compensation which is a part of the due process of law.”).

Constitutional minimum value is defined by statute as the greater of the line’s going concern value and its NLV. 49 U.S.C. § 10907(b)(1)(2), *Cheney R.R. Co.—Feeder Line Acquisition—CSX Transp., Inc. Line Between Greens and Ivalee, AL*, 5 I.C.C.2d 250, 251 (1989). The Port and CORP agree that the Line is experiencing substantial operating losses and that NLV is therefore the appropriate measure of the constitutional minimum amount the Port is required to pay to purchase the Line in this case. *See* Application at 23-25. An NLV in a feeder line proceeding is determined by the same standards as an NLV for purposes of an offer of financial assistance. *See Sandusky County*, 6 I.C.C.2d at 573. The NLV is the sum of the value of the underlying real estate and the net salvage value of track and materials (gross salvage value less cost of removal) *Id*. In other words, the NLV is the monetary value of the rail properties on the line for “their highest and best non-rail use.” *SJVR* at 3; *Sandusky County*, 6 I.C.C. 2d at 573; *Cheney*, 5 I.C.C.2d at 268.

As the applicant in this proceeding, the Port has the burden of proof. *See SJVR* at 3, *Greenville Cty Econ. Dev. Corp.—Abandonment and Discontinuance Exemption—in Greenville Cty*, SC, STB Docket No. AB-490 (Sub-No. 1X), Fed. Carr. Cas. P 37202, 2006 WL 669615, at

*2 (Mar. 16, 2006); *Cheney*, 5 I.C.C.2d at 268. The Board must accept CORP's valuation estimates in the absence of more reliable and verifiable documentation submitted by the Port. The Board has noted that it is particularly appropriate to place the burden of proof on the offeror in a forced sale proceeding because, while the offeror may withdraw its purchase offer at any time, the rail carrier is required to sell the line at the price the Board sets. *See SJVR* at 3. As the Board has explained,

“[b]ecause the burden of proof is on the offeror, absent probative evidence supporting the offeror's estimates, the rail carrier's evidence is accepted. In areas of disagreement, the offeror must present more specific evidence or provide more reliable and verifiable documentation than that which is submitted by the carrier. If the offeror does not present such evidence and/or documentation, then the Board accepts the carrier's estimates in these forced sale proceedings.”

SJVR at 4; *see Chicago & N.W. Transp Co —Abandonment Between Ringwood, IL and Geneva, WI*, 363 I.C.C. 956, 961 (1981) (“where both offeror and offeree have submitted acceptable appraisals and where it is impossible to determine which valuation is more accurate, we shall accept the figure submitted by the offeree-railroad”).

III. FINANCIAL RESPONSIBILITY

The Port has represented that it has access to significant capital to fund the purchase, rehabilitate the Line, and undertake operations over the Line. The Port asserts that it has \$7 million in cash reserves and a loan commitment from Umpqua Bank for \$12,500,000. *See* Application at 12. In addition, the Port has obtained a \$4 million grant from the Oregon Department of Transportation that it may use for acquisition and repair of the line. *See* Supplement to Application at 11 (filed Aug. 8, 2008). Moreover, legislation is pending before Congress that would permit the Port to use a previously-approved \$8 million federal grant as additional capital to acquire and repair the Line. *See id.* The Port therefore has represented that

it has \$31.5 million of available capital to purchase the Line—a figure that does not include the Port’s promised “continued efforts to obtain additional state funding.” *Id.* In addition, the Port expects to charge a substantial per-car subsidy payment to fund ongoing operations on the Line. *Id.* at 10. The Port indicates that the per-car subsidy may be as high as \$600 per car for some commodities. *Id.*

Given these resources, it appears that the Port can well afford to pay the constitutional minimum value of the Coos Bay Subdivision and perform any necessary rehabilitation of the Line. And the Port has confirmed that it is “willing to spend its last dime on saving rail service.” Bishop Supp. V.S. at 10. It should not be overlooked that the Port’s Feeder Line Application is predicated on both its ability to assemble funding from government sources and its plan to charge a significant shipper subsidy. Indeed, the Port’s proposed “quasi-partnership” (*id.* at 9)—in which service on the Line would be supported by substantial government and shipper subsidies—is conceptually similar to the proposals CORP made to the Port, shippers, and government authorities in an attempt to restore rail service immediately following the embargo. The Port’s proposal reaffirms what CORP demonstrated in its application for abandonment authority: that continued service on the Line is not economically feasible in the absence of a substantial subsidy.

IV. ELIGIBILITY FOR FORCED SALE

The Port’s Application seeks a forced sale of two segments of railroad that are very differently situated. The Abandonment Segment between Cordes and Vaughn has been designated as Category 1 track, is the subject of a pending abandonment proceeding, and has been embargoed since September 2007. Pursuant to 49 U.S.C. § 10907(b)(1)(A)(ii), this Category 1 segment is eligible for a forced sale regardless of whether the Board makes a finding of public convenience and necessity. The Port’s complaints about the embargo and supposedly

poor pre-embargo service on that segment are irrelevant—because the line segment was designated as Category 1 track, any financially responsible person is eligible to purchase it for its constitutional minimum value.

In contrast, CORP did not designate the Vaughn-Danebo Segment as Category 1 track, is not seeking to abandon that segment, and is currently serving shippers on that segment. CORP strongly disputes the Port's claim that service on this segment has been inadequate or that the public convenience and necessity require a forced sale. Representative DeFazio and Senators Wyden and Smith have stated that without this segment "future service from the Oregon coast to Union Pacific's mainline in Eugene [would be] impossible." Stmt. of Rep. DeFazio & Sens. Wyden & Smith of Aug. 18, 2008. While CORP does not agree that service on the line would be "impossible," as counsel for CORP indicated to the Board in the hearing of August 21, 2008, it makes operational sense to include the Vaughn-Danebo Segment in any forced sale of the Line. However, CORP is only willing to sell that line segment at its constitutional minimum value.

V. NET LIQUIDATION VALUE

The major area of contention between the Port and CORP in this proceeding is the NLV of the Line. The Port's NLV estimate is based on the ludicrous assumption that 83% of the real property along the Line is totally worthless—including all of the land in several cities and towns, and more than 90% of all the timber properties along the Line. The Port's land NLV estimate is predicated upon unsupported "theories" designed to minimize the value of residential and forested properties. The Port also attempts to minimize the net salvage value (NSV) of the Line's track assets by, *inter alia*, cherry-picking a date for its steel value quotes that was well before its filing, in order to try to avoid the effects of current steel prices. The Port further attempts to discount the constitutional minimum value by grossly overestimating bridge removal costs—costs that may not even be necessary and which in any event would not approach the

enormous sums claimed by the Port. By contrast, CORP presents a well-supported, conservative estimate of the value of real estate along the Line, and multiple analyses supporting its estimate of the net salvage value of track materials.

The Board compares the two estimates of NLV of the Line in the context of the burden of proof, which the Port must bear. It bears repeating that “[b]ecause the burden of proof is on the offeror, absent probative evidence supporting the offeror’s estimates, the rail carrier’s evidence is accepted.” *SJVR* at 4. Where the parties disagree the Port “must present more specific evidence or analysis or provide more reliable and verifiable documentation than that which is submitted by [CORP].” *Id.* The Port has not come close to satisfying this standard. The Board should accept CORP’s estimate of NLV, which is better grounded in traditional valuation methods and actual market values, and has stronger evidentiary support.

A. CORP’s Real Property NLV Estimate Is More Reliable Than The Port’s Estimate.

1. Port Witness DeVoe Employs A Faulty And Inconsistent Methodology.

Mr. DeVoe’s appraisal of the land underlying the Line suffers from numerous methodological flaws and inconsistencies that render his conclusions unreliable. In the text of the Feeder Line Application, the Port represents to the Board that “[f]or each Valuation Unit, Mr. DeVoe developed a unit price by using an across-the-fence valuation methodology.” Application at 20 (emphasis added). However, witness DeVoe did not do any such thing. Instead, in estimating the value of both residential and timbered property, witness DeVoe intentionally ignored the values that the across-the-fence (ATF) methodology indicated in favor of his own “theories” and personal opinions. *Rex V S* at 6. There are a number of other fatal flaws in witness DeVoe’s appraisal, including his failure to consider title, his failure to identify

any comparable residential sales in all but one community along the Line, and his failure to physically inspect most of his “comparable” sales. *See* V.S. Rex.

a. Witness DeVoe Failed to Consider The Status of CORP’s Title.

The fact that witness DeVoe failed even to consider the title status of the property makes his appraisal fundamentally flawed. The Board has considered title status to be a vital element of the NLV, assigning “value only to land to which a railroad holds marketable title.” *San Pedro R.R. Operating Co., LLC--Abandonment Exemption--In Cochise County, AZ*, STB Docket No. AB-1081X, 2006 WL 963539, at *4 (April 13, 2006), *see also Keokuk Junction Ry. Co.—Feeder Line Acquisition—Line Of Toledo Peoria & W. Ry. Corp.*, STB Fin. Docket No 34335, slip op. at 19 (Oct. 28, 2004) (determining that a title opinion prepared by a real estate attorney licensed in the state of the subject line “based on an analysis of the deeds” was a more reliable basis for identifying appraisal area than a naked assertion of fee title). Mr. DeVoe states that he was not provided with a title report, and therefore “assumed that [CORP] owns the unencumbered fee-simple title to the subject [land].” DeVoe Appraisal at 5. However, witness DeVoe’s failure to consider title cannot be attributed to a lack of available information—the valuation map files included in the Port’s Feeder Line Addenda disk included title data. Witness DeVoe simply chose not to consider that information. By contrast, CORP engaged Patricia Chapman, an experienced Oregon-licensed real estate attorney, to assess the title status of each enumerated parcel identified in Mr. Rex’s appraisal. V.S. Chapman at 2.

Witness DeVoe’s failure to consider the issue of title led him to assign values to significantly more land than CORP owns in fee. Rex V.S. at 7. While Mr. DeVoe might attempt to minimize this error on the grounds that it “favors” CORP, it is nevertheless indicative of the sloppy and unreliable nature of the DeVoe Appraisal. Witness DeVoe’s failure to examine title records also required him to speculate about the boundaries of many parcels. *See* DeVoe

Appraisal at 5-7, 9. Had Mr. DeVoe bothered to consult the Valuation Maps that he had in his possession, he would not have had to engage in such guesswork.

b. Mr. DeVoe Did Not Identify ANY Comparable Sales for Many Communities.

While the Port's Feeder Line Application claims (at 20) that Mr. DeVoe applied an ATF methodology to each Valuation Unit, DeVoe did not, in fact, do so. Indeed, he did not identify any comparable sales for residential land in most communities, as required to perform an ATF valuation, which after all depends on looking at comparable sales "across the fence." Indeed, the only comparable sales offered by Mr. DeVoe to support his appraisal of residential land across the 111-mile feeder Line Segment are four (supposedly) comparable sales, two in Swisshome, a small town of 320 people, and two in Deadwood, a small town of 502 people located miles away from the Line, both in Lane County. Mr. DeVoe did not present any comparable sales of residential property anywhere in Coos or Douglas Counties, nor did he do so for larger towns such as Veneta, Mapleton, Florence, Reedsport, and Lakeside. Whether or not Mr. DeVoe truly believes his repeated assertion that "no [comparable] sales in the area were found to provide a basis for matched pair analysis" (*see, e.g.*, DeVoe Appraisal at 166, 169, 173-174), his failure to offer any comparable sales data to support his appraisal of residential land renders that appraisal worthless. As witness Rex shows, there was no shortage of available residential sales for comparison purposes in the communities along the Line.

Remarkably, Mr. DeVoe attempts to dismiss this fundamental shortcoming in his analysis as "of little consequence because although the location is different the market characteristics are essentially the same." DeVoe Appraisal at 169. As Mr. Rex states, "the three most important characteristics in real estate valuation are 'location, location, and location.'" Rex V.S. at 8. Mr. DeVoe's suggestion that location does not matter in valuing residential property is absurd on its

face. Moreover, Mr. DeVoe's decision to base his analysis of all residential land along the 111-mile Coos Bay Subdivision on a few comparable sales in Swisshome does not appear to be coincidental. Swisshome has the lowest per-acre residential property value of any community along the Feeder Line Segment (approximately [] per acre). By contrast, the comparable sales data presented by witness Rex indicate that the per-acre value of residential land is approximately [] in Coos County, and [] in Lakeside. Rex V.S. at 8, and [] in Veneta. Rex Appraisal at 11, 25-26. Mr. DeVoe's failure to take such substantial differences between communities into account renders his analysis of residential property meaningless.

Mr. Rex presented comparable sales of residential property in virtually all of the communities along the Feeder Line Segment, and he based his appraisal on analysis of ATF values specific to each community. Rex V.S. at 8. The fact that Mr. Rex based his appraisal on ATF values obtained from analysis of community-specific comparable sales, while Mr. DeVoe did not, renders Mr. Rex's appraisal much more reliable.

Mr. DeVoe's appraisal of timber properties suffers from the same fundamental flaw. Witness DeVoe identified only 5 comparable sales of timber properties, all in Lane County. He then proceeded to ignore even those few comparables, declaring that more than 1,000 acres of forested land along the Line are "worthless." The fact that Mr. DeVoe based his appraisal on such thin comparable sales data shows that Mr. DeVoe's claim to follow ATF methodology is a sham.

c. Mr. DeVoe Did Not Inspect Many Of His Comparable Sales.

The reliability of the DeVoe Appraisal is further cast into doubt by Mr. DeVoe's failure to actually inspect the very few properties that he offers as "comparable sales." Claiming that "[i]n general, the rurally located comparable sales were not viewed in person due to lack of

accessibility,” Mr. DeVoe excuses this failure on the grounds that “often little meaningful information can be gleaned from roadside inspection due to tree cover and topographic constraints.” DeVoe Appraisal at 4. As Mr. Rex explains:

This excuse makes no sense; some of the most important information to be gleaned from a physical inspection of comparable sales is whether there are topographic constraints and what the tree cover is like. A physical inspection of comparable sales is also necessary to find out whether there are improvements on the property and to determine if the neighborhoods in which the subject property and the comparable sale are located have similar characteristics.

Rex V.S. at 8-9 (emphasis added). By contrast, either Mr. Rex or his associate, Cameron Rex, physically inspected all accessible sales that Mr. Rex relied upon in conducting his appraisal.

Rex V.S. at 9. Mr. Rex and his associate took pictures and made notes on the physical inspection of these properties, which appear in Mr. Rex’s workpapers.

d. Mr. DeVoe Failed To Apply Consistent Valuation Methodology.

Mr. DeVoe professes to agree with Mr. Rex that “the best starting point for estimating the subject’s base value is the across-the-fence (ATF) value.” DeVoe Appraisal at 70; Rex V.S. at 9. Mr. Rex fully explains the ATF methodology in his verified statement. Rex V.S. at 9. However, while the Port and Mr. DeVoe claim that DeVoe’s appraisal is based on ATF methodology, Mr. DeVoe does not actually apply an ATF methodology in valuing most of the land along the Line. Rex V.S. at 10. He attempts to justify his departures from ATF value on the grounds that (according to him) “the encumbered subject can generally be considered to contribute potential value at a lesser rate than ATF values.” DeVoe Appraisal at 70. For example, in estimating the value of residential property, Mr. DeVoe eschewed any analysis of the values indicated by the ATF methodology in favor of his so-called “base homesite theory,” which is premised on the (nonsensical) notion that a purchaser of residential property will be willing to pay no more than a

minimal amount for any acreage in excess of the minimum required by law for a “base homesite.” DeVoe Appraisal 71.

Likewise, in Valuation Unit 3 (“Forest Nominal”), Mr. DeVoe disregarded entirely the ATF values indicated by his comparable sales data, saying that “[a]lthough the market data presented here has little direct relevance to this Valuation Unit, it was judged worthwhile to include here to exemplify the range of ATF values to help put the nominal value [of \$0] conclusion in perspective.” DeVoe Appraisal at 109 (emphasis added). And while Mr. DeVoe purported to apply ATF methodology in valuing industrial land along the Line, he applied an across-the-board discount of 50% from ATF value because of certain rights reserved by Southern Pacific Transportation Company (“SPT”) in the original conveyance of the railroad to CORP, without any support based on Oregon law or market evidence that such a discount is warranted.⁴

As Mr. Rex explains, “[i]t is not a proper application of the ATF appraisal methodology to ignore altogether the values indicated by comparable sales data.” Rex V.S. at 11. In conducting his appraisal, Mr. DeVoe substituted for market evidence his personal opinion that all of the forested land in Valuation Unit 3—more than 1,000 acres—is worthless to adjacent property owners. Mr. Rex articulates a number of reasons why adjacent property owners purchase sections of former corridors, and explains that any adjustments to ATF values must be supported by market data in a proper appraisal. Rex V.S. at 11.

Mr. DeVoe not only violated accepted principles of land appraisal, he also ignored the experience of George Ross, an expert in rail corridor disposition, upon which DeVoe purported to rely for insights regarding the disposition of railroad right-of-way. DeVoe Appraisal at 72.

As Mr. DeVoe’s workpapers indicate, Mr. Ross advised that it is his company’s “policy [] to

⁴ As discussed below, the Verified Statement of Todd Cecil conclusively debunks the notion that any discount should be applied on account of the easements reserved by SPT.

accept no less than ATF values.” See Rex V.S., Attachment 5. Notwithstanding this sound advice, Mr. DeVoe substituted his own subjective judgments about the value of the subject land. Mr. DeVoe’s failure to adopt and apply any coherent methodology in conducting his appraisal should lead the Board to reject it outright.

2. Mr. DeVoe’s “Base Homesite Theory” Is An Unsupported Artifice Invented To Minimize His Valuation Of Residential Property.

Mr. DeVoe’s appraisal of residential property along the Line is based upon a novel theory he calls the “base homesite theory.” The “base homesite theory” posits that residential properties “generally contribute at a low rate relative to an overall homesite value [as] remainder analogous to agricultural or open space values.” DeVoe Appraisal at 146. As Mr. Rex explains, Mr. DeVoe’s irrational “base homesite theory” is without any basis in either appraisal theory or practice Rex V.S. at 13-14. Indeed, Mr. Rex testifies that “in my 34 years of appraising land, teaching appraisal courses and researching the appraisal literature, I have never heard of the ‘base homesite theory.’” Rex V.S. at 13 (emphasis added).

Mr. DeVoe’s theory defies both logic and market reality. Indeed, Mr. Rex testifies that “[i]t takes no more than a glance at the comparable sales for rural residential properties in [Lane and] Coos Count[ies] to see that witness DeVoe’s base homesite theory has no validity.” Rex V.S. at 14-15. The comparable sales presented by Mr. Rex include two comparable sales involving the very same buyer, whose purchase of two different size parcels a few months apart show that the buyer valued a 1-acre lot at very close to the same price per acre as it did the smaller “base homesite” of 0.14 acres. Rex V.S. at 15. Indeed, one of the property sales Mr. DeVoe uses as an exemplar of his theory actually refutes it: the 0.23 acre property in Swisshome is actually two side-by-side 1/10 acre lots. DeVoe Appraisal at 150. If Mr. DeVoe’s theory had

any validity, the purchaser would not have agreed to pay nearly \$65,000 to acquire twice as much land as the law required to build a home in that part of Swisshome.

Even if the “base homesite theory” were valid—and it is not—Mr. DeVoe’s methodology to apply that theory is a transparent device to devalue the residential land along the Line. Mr. DeVoe applied his theory in the following manner:

- DeVoe identified two land sales in each of Swisshome and Deadwood, OR, which he characterizes (without any analysis) as “matched pairs”.
 - the first “matched pair” is a 0.23 acre property, consisting of two adjoining lots (one with a small home) in the main residential section of Swisshome located next to the CORP rail line (RR-1) and a 7-acre parcel in another part of Swisshome further away from the line (RR-2); and
 - the second “matched pair” is a lot of 0.75 acres in the main residential area of Deadwood (RR-3) and an 8.11 acre plot located between Deadwood and Greenleaf OR (RR-4). Neither Deadwood nor Greenleaf is located along the CORP right-of-way.
- For each “matched pair,” witness DeVoe subtracted the price of the smaller property from the price of the larger property. For example, in Swisshome, he subtracted the price of the 0.23-acre lot (\$65,000) from the price at which the 7-acre lot sold (\$100,00). He then divided the price difference (\$35,000) by the number of acres in the larger parcel (7) to determine a price of \$5,000 per acre for the (supposedly) “excess” property contained in the larger parcel.
- Based upon this subtraction methodology, witness DeVoe determined that the average difference for both matched pairs was approximately \$7,500 per acre. Without any explanation, witness DeVoe asserts that his calculations “provide[] good support for the value that the rural residential market places on area in excess of the base homesite area.” DeVoe Appraisal at 157.
- DeVoe then discounted the \$7,500/acre value that he derived for “excess” acreage by 50%, to \$3,750 per acre, because (according to him), “the subject is so heavily encumbered by the SPTC easements/reservations.” *Id.* (In part E below, I demonstrate why this discount is not supported by market evidence)
- Finally, without even considering the per-acre value of a “base homesite” or larger residential parcels in any other community, witness DeVoe applied the price for “excess” acreage that he calculated for Swisshome (\$3,750 per acre) to all residential property along the entire 111-mile Coos Bay Subdivision.

DeVoe then compounds error with fancy by applying the value he derived from Swisshome, where real estate values are lower than anywhere else along the Line, to all other residential areas, claiming that “no sales in the area were found to provide a basis” to support his unfounded theory. *See, e.g.*, DeVoe Appraisal at 166. This figure bears repeating: DeVoe sets the value of residential land along the rivers and dunes of the Oregon Coast at \$3,750 per acre. DeVoe Appraisal at 157. Mr. Rex explains that DeVoe’s methodology employed to apply his fanciful base homesite theory is unsound, showing that the theory is “an apparent artifice to devalue all of the residential land along the Feeder Line Segment ” Rex V.S. at 16.

Mr. Rex’s testimony identifies numerous fatal flaws with this “base homesite methodology.” First, Mr. Rex explains that the matched-pair analysis as it is done by Mr. DeVoe is not a statistically valid concept. Rex V.S. at 17. Second, the properties Mr. DeVoe characterizes as “matched pairs” in applying his price subtraction methodology are not “matched” in any meaningful sense. Rex V.S. at 18. Third, Mr. DeVoe offers no evidence whatsoever that the purchasers of the larger lots in his matched pair analysis actually considered the value of a “base homesite” separately from the value of the land, or intended to pay a substantial sum for a “base homesite” and a minimal amount for the additional land they purchased. Rex V.S. at 18. Fourth, witness DeVoe’s assertion that the four dissimilar properties in Swisshome and Deadwood were the only “matched pairs” of comparable sales available anywhere along the right-of-way is simply not credible. Rex V.S. at 19. Indeed, Mr. Rex’s appraisal identifies comparable sales data in virtually all communities along the Line.

Fifth, even if the application of Mr. DeVoe’s base homesite methodology in Swisshome were otherwise valid, the resulting per-acre value for “excess” land in Swisshome cannot legitimately be applied to residential property in other communities along the Feeder Line

Segment. Witness DeVoe contends that his failure to identify matched pairs of residential land in each community for analysis under his base homesite methodology “is judged to be of little consequence because although the location is different the market characteristics are essentially the same.” See, e.g. DeVoe Appraisal at 166, 169, 174 (emphasis added). This assertion reflects a total lack of understanding of the residential real estate market in the communities along the Line, where values vary widely. Rex V.S. at 20. As stated above, the comparable sales data that Mr. Rex identified in his appraisal demonstrate that the value of rural residential property is approximately \$[] per acre in Coos County (Land Use 27); \$[] per acre in Lane County (Land Use 1); and \$[] per acre in the community of Lakeside (Land Use 26). Mr. DeVoe’s decision to use values based upon application of his “base homesite methodology” to Swisshome—which has the lowest property values of any community along the Line—as the basis of all residential property appears to be intentionally designed to produce the lowest possible value. By contrast, Mr. Rex developed location-specific ATF values, supported by comparable sales, for each individual community along the right-of-way. Mr. DeVoe’s appraisal of residential property should be rejected by the Board outright.

3. Mr. DeVoe Creates A “Forest Nominal” Category Which He Incorrectly Declares Worthless And Incorrectly Applies To Residential Property.

In addition to the general methodological problems with DeVoe’s appraisal, the shortcomings with DeVoe’s appraisal become apparent when considering the sheer amount of land that is assigned \$0 value: 1,466.89 acres out of 1,741.52 acres total, or 83%. DeVoe Appraisal at 76; Application at 21. One of the mechanisms employed to arrive at this high proportion of “worthless” land was to create a valuation category that Mr. DeVoe calls “Forest Nominal,” or Valuation Unit 3, for which DeVoe claims “essentially no value is judged to exist.” DeVoe Appraisal at 87. Mr. DeVoe then applies this “Forest Nominal” category as a broad

brush, painting more than 1,000 acres—including properties that are properly classified as “residential” rather than “forest”—as “worthless.” These errors make Mr. DeVoe’s appraisal unreliable.

a. Mr. DeVoe Declares The Vast Majority Of Timber Land Along The Feeder Line Segment To Be Worthless.

While Mr. DeVoe identifies 1,137 acres of forested timber land, he assigns \$0 value to 1,032 of those acres, categorizing them as “Forest Nominal” (Valuation Unit 3). DeVoe Appraisal at 76. According to Mr. DeVoe, “essentially no value is judged to exist” for any of this forested land. DeVoe Appraisal at 87. This judgment is not based upon an ATF analysis of the subject property (or, for that matter, on application of any other recognized appraisal methodology). While Mr. DeVoe briefly mentions 5 comparable sales in his discussion of this valuation section, he ignores what those comparable sales tell him. See DeVoe Appraisal at 97-108. Instead, Mr. DeVoe relies on mere *ipse dixit* in asserting that “abutting lands are forest-oriented properties that have no likely use for the subject due to its lack of timber rights, pipe and communication line easement and presence of ballast.” DeVoe Appraisal at 87. DeVoe explains this *assumption* by stating: “[i]t is *understood* that all of the abutting lands have existing access and no likely situations were uncovered where the subject would offer a significant benefit to abutting properties in terms of accessibility.” DeVoe Appraisal at 87 (emphasis added). None of these reasons supports DeVoe’s \$0 valuation.

First of all, as witness Cecil explains, CORP does own timber rights on its land in Douglas County; CORP repurchased those rights from UP in 1998. Cecil V.S. at 2-3. Nor would CORP’s lack of timber rights in Lane and Coos counties make CORP’s forested land in these counties worthless. If there were harvestable timber on the property in Lane or Coos Counties it would be a simple matter for the adjoining landowner to purchase the subject land

from CORP and the related timber rights from UP, which has never exercised these rights. *See Rex Appraisal* at 29-30.

Nor does the existence of the pipeline and communication easements have any relevance to the value of timber property. Mr. Cecil testifies that those easements have never been exercised in the fourteen years that CORP has owned the Line, and UP is unlikely to use them in the future. *Cecil V.S.* at 8-9. Indeed, DeVoe admits that the subject property “does not have reasonable potential for pipeline or communication line uses.” *DeVoe Appraisal* at 11. Even if there were a possibility that these easements could be used in the future, the presence of such facilities would not preclude harvesting timber on the subject property (or using the subject property in connection with harvesting activities on adjacent land). Therefore, these easements would have no bearing on the subject land’s utility to adjoining forest properties.

As Mr. Rex explains, in those cases where the subject bisects large forest holdings, the subject land could be useful to the surrounding owner as a logging road, for which the presence of ballast would be a benefit rather than a detriment. *Rex V.S.* at 22. The subject land is particularly well suited for conversion to a road, since the land has already been cleared and has ballast. *Id.* The subject land would also allow owners of bisected holdings contiguous ownership of their land, so that one portion of the bisected land could be easily accessed from the other without trespassing on another person’s land. *Id.* In those areas where the right-of-way lies entirely along a preexisting road, purchase of the subject land would provide adjoining owners access to that road. *Id.*

Moreover, the fundamental notion that forested land is “worthless” in Oregon, where the timber industry is a leading component of the economy, is simply not plausible. Many of the valuation sections identified by DeVoe bisect timber properties that are owned by commercial

forest concerns such as Rosboro LLC (*e.g.*, DeVoe Valuation Sections 62, 181), Roseburg Resources (*e.g.*, DeVoe Valuation Sections 56-58, 192), and D.R. Johnson Lumber Co. (*e.g.*, DeVoe Valuation Sections 189-191). *See* DeVoe Appraisal at 89-94. If timber land had no utility to these companies, they would be in a different business; in any event, they would not have purchased land on either side of the Line.

Mr. DeVoe classifies 105 acres as “Forest Desirable,” which DeVoe describes as being “marketable to abutters . . . due to being residentially oriented, small in size and/or being bisected by the subject property.” DeVoe Appraisal at 111. This distinction is nonsensical; much of the abutting land along the Line that he classified as Forest Nominal is also bisected by the subject, residentially oriented, or small in size. *See, e.g.*, DeVoe Valuation Sections 40, 41, 56, 57, 117, 156, 181, 192; DeVoe Appraisal at 89, 91, 93, 94. In neither of these Valuation Units does Mr. DeVoe explain why subject land abutting residential property should not itself be classified as residential.

b. DeVoe Misclassifies Residential Land As Forest Nominal In Order To Minimize His Appraisal.

Having created a convenient mechanism for classifying vast properties as worthless, Mr. DeVoe compounds his error by misclassifying many properties into this category where the highest and best use is residential, including many valuation sections where the adjoining parcels already have residences. *Rex V.S.* at 26; DeVoe Appraisal at 89-95. Mr. DeVoe also classifies as “Forest Nominal”—and assigns \$0 value to—several parcels where one side of the subject lies along a road and the other side backs up to a national or state forest. *See, e.g.*, DeVoe Valuation Sections 93a, 102, 106, 108; DeVoe Appraisal at 89-95. DeVoe’s mischaracterization becomes apparent when considering stretches of subject land where DeVoe parsed the subject into alternating residential and worthless sections, as he did in Brickerville and Mapleton. *Rex V.S.*

at 27. The following table illustrates how Mr. DeVoe subdivided six miles of the subject from Milepost (MP) 699.75 to MP 706.08 into 21 sections of alternating value (residential sections were assigned to Valuation Unit 7 and are shaded). *See* Rex V.S. at 36-37, table 5.

Table 5: DeVoe Valuation Sections from Brickerville to Mapleton

DeVoe Section#	MP Start	MP End	DeVoe Val Unit	Section Acres	DeVoe Appraised Value
93a	699.75	701.62	3 Forest Nominal	34.50	\$0.00
93b	700.40		1 No Value	0.14	\$0.00
94	701.62	701.82	7 Residential	2.39	\$8,962.00
95	701.90		1 No Value	0.14	\$0.00
96	701.82	702.14	2 Nominal	3.82	\$0.00
97	702.14	702.25	7 Residential	1.38	\$5,175.00
98	702.25	702.80	3 Forest Nominal	6.67	\$0.00
99	702.80	702.86	7 Residential	0.69	\$2,587.50
100	702.86	703.60	4 Forest Desirable	8.97	\$1,668.50
101	703.60	703.72	7 Residential	1.45	\$5,437.50
102	703.72	703.77	3 Forest Nominal	0.64	\$0.00
103	703.77	703.90	7 Residential	1.63	\$6,112.50
104	703.90	704.20	3 Forest Nominal	4.40	\$0.00
105	704.20	704.36	7 Residential	1.99	\$7,462.50
106	704.36	704.74	3 Forest Nominal	5.44	\$0.00
107	704.74	705.04	7 Residential	6.59	\$24,712.00
108	705.04	705.44	3 Forest Nominal	1.27	\$0.00
109	705.44	705.55	7 Residential	2.69	\$10,087.50
110	705.55	705.55	1 No Value	0.23	\$0.00
111	705.55	705.91	3 Forest Nominal	6.58	\$0.00
112	705.91	706.08	7 Residential	3.19	\$11,962.50

As Table 5 from Mr. Rex's verified statement shows, Mr. DeVoe parsed the subject line into alternating residential and nominal sections in Brickerville and Mapleton. *See* DeVoe Appraisal at 83, 91, 145-46. As Mr. Rex explains, this type of alternating valuation is not market supported. Rex V.S. at 37. The only rationale offered for valuing the alternating sections as non-residential is that the abutting properties do not actually have houses built on them. As Mr. Rex explains, this is not a valid justification when, as here, the subject land lies between other residential parcels and is otherwise entirely suitable for residential purposes. Rex V.S. at 37.

The above table illustrates the lengths to which Mr. DeVoe went to ignore what the ATF comparables told him, and exposes the arbitrariness of DeVoe's appraisal methodology.

4. Mr. DeVoe Applies A 50% Discount Or More To Property Subject To SPT Easements Without ANY Market Support.

Mr. DeVoe further undermines the reliability of his appraisal by applying an unsupported 50% discount or more to the base value of all subject property (with few exceptions). *See* DeVoe Appraisal at 157, 166, 169, 174, 192, 209, 224, 240.⁵ Mr. DeVoe attempts to justify this massive discount as the result of the following SPT retained rights on the Line: water rights, timber rights, mineral rights, and communications and pipeline easement. DeVoe Appraisal at 10. There is also a restriction on erecting a permanent building, structure, or fence if it would interfere with existing or planned communication or pipeline facilities.⁶ DeVoe Appraisal at 10. According to Mr. DeVoe, those reservations greatly diminish the utility of CORP's right-of-way to any potential purchaser and, in his judgment, support an across-the-board reduction of 50% of the value of virtually all of the right-of-way land. Mr. DeVoe's judgment is unsupported by his analysis or by real-world experience.

Witness DeVoe's discount cannot be justified on the basis of the timber rights reserved by SPT. As witness Cecil shows, CORP re-acquired the timber rights for Douglas County from UP in 1998. Cecil V.S. at 2. The Timber Quitclaim Deed is a matter of public record, and was available to Mr. DeVoe at the time he performed his appraisal. Thus, Mr. DeVoe's reduction of the value of timbered right-of-way land in Douglas County on account of timber rights reserved

⁵ DeVoe does not apply a 50% discount to his base value for two acres in Valuation Unit 5 and eleven acres in Valuation Unit 12, where DeVoe simply applied a value of \$5,000 per acre to desirable waterfront residential property. DeVoe Appraisal at 125, 177. DeVoe also discounts forest property and farmland by well more than 50%. DeVoe Appraisal at 113, 142.

⁶ *See, e.g.*, Feeder Line Application, Vol. III, Addenda Section B, Lane County Quitclaim Deed at 4.

by SPT in the original deed to CORP was clearly in error. Furthermore, as Mr. Rex explains in his appraisal, the price paid by CORP for the Douglas County timber rights does not support a discount of 50% in land values in Lane and Coos Counties on account of the timber rights. Rex V.S., Attachment 1 at 29-31.

Nor do the mineral rights and communications and pipeline easement reserved by SPT warrant the 50% discount imposed by witness DeVoc. As witness Cecil explains, "SPT has never attempted to exploit any mineral rights, nor has it installed (or granted to a third party the right to install) any pipeline or communications facilities on or along CORP's right-of-way, with the exception of fiber optic lines located at the extreme northern end of the Coos Bay Subdivision between Milepost 652 and Milepost 654 in the vicinity of Danebo, OR." Cecil V.S at 3.

Moreover, Mr. DeVoc's apparent assumption that the No-Build Clause prohibits any construction of buildings or structures within 50 feet of the center line of CORP's right-of-way is wrong on its face. The No-Build Clause prohibits the construction of permanent buildings or structures within 50 feet of the center line only if such buildings or structures "would obstruct or interfere with any then existing or planned Microwave Facilities or other communications facilities or pipelines of [SPT] located on or planned to be located on" the CORP right-of-way. Thus, for example, because fiber optic lines exist between Milepost 652 and Milepost 654, a potential purchaser of that portion of the CORP right-of-way cannot build a permanent building or structure that would "obstruct or interfere with" those existing facilities (e.g., by erecting a building directly on top of the fiber optic lines).

Because there are not (and never have been) any "existing" or "planned" SPT pipeline or communications facilities elsewhere on the CORP right-of-way (except between Milepost 652

and Milepost 654), the rights reserved by SPT do not limit the ability of potential purchasers to develop right-of-way land. Witness Chapman confirms that Oregon law would disfavor any reading of this clause which would prevent purchasers from building on the subject property in the absence of any interference with existing or planned facilities. Chapman V.S. at 3. Indeed, witness Chapman states that under Oregon law, a prospective purchaser would have a right to make reasonable use of purchased land, notwithstanding any existing or planned use of the SPT rights. Chapman V.S. at 3-4. As witness Cecil shows, actual right-of-way land sales by CORP confirm that the SPT reservations have never resulted in any discount to “fair market value”—much less the 50% discount arbitrarily assigned by Mr. DeVoe

Witness DeVoe cites only one piece of market evidence to support his blanket discount: a 2002 CORP sale of industrial land in Noti to Swanson Brothers Lumber Co. DeVoe Appraisal at 209. DeVoe compared the 2002 CORP sale to a 2006 sale and a 2007 sale to conclude that the 2002 CORP sale was executed at a 50% discount to ATF. However, as witness Cecil shows, a contemporaneous appraisal of the property at the time of the 2002 sale demonstrates that contrary to DeVoe’s *assumption*, the property was sold to Swanson Brothers Lumber Co. at a 152% premium over ATF.

Indeed, witness Cecil “state[s] unequivocally that the rights reserved by SPT have not materially affected the price that CORP has been able to obtain for [any] right-of-way property that is subject to the SPT reservations.” Cecil V.S. at 6. Witness Cecil presents a list of 15 CORP sales of property subject to the SPT reservations, and states that “[i]n no instance was land sold at a 50% discount from ATF value – much less rendered valueless – on account of SPT’s reserved rights.” Cecil V.S. at 8 (emphasis in original). This is not surprising. As Mr. DeVoe himself recognizes, the Coos Bay Subdivision’s right-of-way “does not have reasonable

potential for pipeline or communication line uses.” See DeVoe Appraisal at 11. That Mr. DeVoe discounts property by 50% on the basis of easements that he himself believes have no “reasonable potential” for use is further proof that his appraisal is entirely unreliable.

5. Mr. DeVoe Assigns \$0 Value To Land In The Most Expensive Communities Along The Feeder Line Segment.

The DeVoe Appraisal employs a number of other transparent devices in an attempt to deprive CORP of its property without paying the constitutional minimum value. In addition to the more than 1,000 acres of timber property that Mr. DeVoe assigned a \$0 value, DeVoe arrives at the fantastic conclusion that 1,466.89 acres out of 1,741.52 acres,⁷ or 83%, are worthless by assigning \$0 value to property in several of the most expensive communities along the Line: Lakeside, Veneta, and Hauscr. In none of these cases did Mr. DeVoe present any comparable sales or other evidence to support his \$0 value estimate.

For example, Mr. DeVoe assigns \$0 value to all land in the City of Lakeside, a residential community which lies between the Oregon Dunes National Recreation Area along the Pacific Ocean and Tenmile Lake, “one of Oregon’s largest and most popular recreation lakes.” DeVoe Appraisal at 227-28. He reaches this improbable conclusion without presenting any comparable sales information. Instead, he offers only his opinion that “encumbrance limitations and market limitations” eliminate any economic utility, even though CORP has made two prior land sales at or above market value in this area. *Id.* at 227. Witness DeVoe also justifies his \$0 valuation in Lakeside by claiming that “[s]ignificant portions of the subject line are only 40 feet wide through the city.” DeVoe Appraisal at 227. However, of the 23 acres of subject land in Lakeside, only 2.66 acres are so narrow. DeVoe Appraisal at 227; *see also* Val Map V-2/28 & V-2/S-28,

⁷ This figure was presented by the Port as the total fee acreage of the Feeder Line Segment. See Application at 21.

Addendum D. The remaining 20+ acres of the subject land in Lakeside range from 150-200 feet wide, which, according to Mr. Rex, is more than deep enough to site an independent homestead on in most areas. Rex V.S. at 33; *see also id* Attachment 1, Addendum D (Val Map V-2/28 & V-2/S-28). Indeed, that land lies at the end of residential streets and is suitable for cul-de-sac residential use, making the property some of the most desirable residential property in Lakeside. Rex V.S. at 33. Mr. DeVoe's failure to engage in market analysis for property in a city with abundant comparables is, at best, baffling. *See* Rex. V.S. at 38.

Mr. DeVoe also assigns \$0 value to all land in the City of Veneta, a community in which the comparable sales data indicate an ATF value of [] per acre for some residential property (Rex V.S., Attachment 1 at 25-26) DeVoe Appraisal at 161-63. Once again, Mr. DeVoe did not bother to consult any comparable sales data in arriving at his estimate of value. Rather, he simply asserts that the land has no value because it was sub-zoned for Greenway-Open Space use. As Mr. Rex explains, this conclusion is not supported by the market evidence, as CORP has sold several parcels of land along its right-of-way located within the so-called "Greenway" subzone in Veneta over the past several years. *See* Rex. V.S. at 36

Finally, DeVoe assigns a \$0 value to nearly all the subject land from Hauser to the end of the Line near Cordes, including almost 100 acres with potential residential use next to the Oregon Dunes National Recreation Area and 2.4 commercial acres in Hauser. (DeVoe Appraisal at 84-85) Mr. DeVoe provides no comparable sales to support this conclusion, and indeed, he does not even offer an excuse to justify his wholesale devaluation of the area. *See* Rex. V.S. at 37-38 This sort of transparently illogical, results-oriented "analysis" falls far short of the Port's burden to justify its NLV.

B. The Actual Offers To Purchase the Line's Track Assets Are A Far Superior Measure Of Their NLV Than The Flawed Estimate Of The Port's Consultant.

As the Applicant in this proceeding, the Port has the burden of proof. *See Greenville Cty. Economic Development Corp.—Abandonment and Discontinuance Exemption—in Greenville Cty., SC*, STB Docket No. AB-490 (Sub-No. 1X) (Mar 15, 2006); *Cheney*, 5 I.C.C.2d at 268. Accordingly, the Board must accept CORP's valuation evidence in the absence of more reliable and verifiable evidence submitted by the Port. As the Board has explained,

“[b]ecause the burden of proof is on the offeror, absent probative evidence supporting the offeror's estimates, the rail carrier's evidence is accepted. In areas of disagreement, the offeror must present more specific evidence or provide more reliable and verifiable documentation than that which is submitted by the carrier. If the offeror does not present such evidence and/or documentation, then the Board accepts the carrier's estimates in these forced sale proceedings.”

Greenville County Economic Corp. at *2; *see Chicago & N.W. Transp Co —Abandonment Between Ringwood, IL and Geneva, WI*, 363 I.C.C. 956, 961 (1981) (even “where both offeror and offeree have submitted acceptable appraisals and where it is impossible to determine which valuation is more accurate, we shall accept the figure submitted by the offeree-railroad”); *see SJVR*, slip op at 3-4 and authority cited therein.

The Port's estimated NLV for the track assets of the Coos Bay Subdivision is fundamentally flawed and unreliable and fails to satisfy the Port's burden of proof. In addition to rebutting the NLV's estimate submitted by the Port's consultant, CORP has obtained two actual firm and binding purchase offers for the track assets of the Coos Bay Subdivision, as well as a separate offer to salvage the Siuslaw and Umpqua River bridges. Those real world *bona fide* purchase offers establish the fair market value (NLV) of the track assets. *See United States v 564.54 Acres of Land*, 441 U.S. 506, 511 (1979) (affirming longstanding fundamental principle that fair market value required as just compensation in takings cases is “what a willing buyer

would pay in cash to a willing seller” at the relevant time) (collecting cases); *Almota Farmers Elevator and Warehouse v. United States*, 409 U.S. 470, 474 (1973) (fair market value “is normally to be ascertained from ‘what a willing buyer would pay in cash to a willing seller’”).

Each of the offers obtained by CORP is nearly 100 percent higher than the artificially low estimate generated by the Port’s consultant.⁸ The magnitude of the difference—between real world offers by experienced rail supply and salvage companies and a theoretical estimate generated for purposes of litigation by the Port’s hired consultant—alone demonstrates that the Port has failed to meet its burden of presenting (let alone supporting) a credible estimate of the actual NLV of the track assets. For this and several other compelling reasons, the Board should reject the Port’s estimate and accept CORP’s NLV estimate for track assets.

A detailed evaluation and criticism of the NLV estimate submitted by the Port’s consultant Mr. Gene Davis of R L. Banks Associates (sometimes referred to hereinafter as “RLB”) is set forth in the Verified Statement of Alan Pettigrew and supporting attachments and exhibits. The following discussion discusses the purchase offers that support CORP’s NLV calculation and summarizes some of the main flaws and errors in the Port’s track asset NLV estimate

⁸ The Port assumes the NLV of the track assets totals \$8,901,000. L.B. Foster has offered to purchase the track assets (including the Siuslaw and Umpqua River bridges) for \$17,609,000. Unitrac Railroad Materials has offered to purchase the assets (exclusive of those bridges) for \$19,504,000. See L.B. Foster offers (copies at Attachments 3-4 to Verified Statement of Alan Pettigrew); Unitrac offer (copy at Attachment 1 to V.S. Pettigrew). The average of those two actual purchase offers is \$18,556,500, which is 108% higher than the Port’s flawed estimate. As Mr. Pettigrew further notes, the fact that the two purchase offers are very close to one another in amount provides further confirmation of their accuracy, and the unrealistic nature of the Port’s estimate.

1. CORP's NLV Estimate Is Based Upon Actual Purchase Offers, Not A Consultant's Made-For-Litigation Estimate.

CORP has obtained two firm purchase offers for the track assets of the Coos Bay Subdivision, each of which is a far better indicator of the fair market value of those assets than the NLV estimate submitted by the Port's consultant. *See V.S. Pettigrew* at 3-7. As the Board affirmed just this week, real world, firm purchase offers from salvage companies – such as those CORP obtained from experienced salvage contractors L.B. Foster and Unitrac Rail Materials – are better evidence of the market value than “mere valuations” that are not backed by an offer to purchase the line. *See San Joaquin Valley RR Co – Abandonment Exemption – in Tulare County, CA*, STB Dkt. No. AB-398 (Sub-No. 7X), Decision at 4-5 (served Aug. 26, 2008).

L.B. Foster has offered \$ 17,609,000 to purchase the track assets, including salvage of the Siuslaw and Umpqua River bridges. *See V.S. Pettigrew*, Attachment 2. Unitrac Railroad Materials, Inc. has offered to purchase the track assets, without the bridges, for \$19,580,204. *See id.* Attachment 1. These two arms-length purchase offers, presented by ready, willing, and able competing bidders in the marketplace, establish that the fair market value (and the NLV) of the track assets of the Line is \$19,580,204, a purchase price CORP could obtain today simply by accepting Unitrac's higher purchase offer. *See SJVR Abandonment*, Decision at 3-5; *Mississippi Tennessee Holdings LLC – Abandonment Exemption – In Union, Pontotoc, and Chickasaw Counties, MS*, STB Dkt. No. AB-868X, slip op at 6 (served Nov. 2, 2004) (finding firm offer to be best evidence of record of rail line's fair market value); *see also, Pyco Industries, Inc.—Feeder Line Application—Lines of South Plains Switching, Ltd.*, STB Fin. Docket No. 34890 (Aug. 31, 2007) (“A signed sales contract or firm bid that would be binding upon its acceptance can be convincing evidence of the fair market value of a rail line or segment.”); *1411 Corporation – Abandonment Exemption – In Lancaster County, PA*, STB Dkt. No. AB-

581x (served Oct. 16, 2001) (adopting purchase offer as best evidence of fair market value of rail assets). As the Board reaffirmed this week, it “may not set a price that is below the FMV of the line.” *SJVR*, STB No. AB-398 (Sub-No. 7x).

Shortly after the Port of Coos Bay filed its Feeder Line Application, CORP solicited bids for purchase of the track assets of its Coos Bay Subdivision, the Line the Port seeks authority to purchase in this proceeding. To assist prospective bidders in evaluating the value of those assets, CORP prepared a track asset inventory (which it also furnished to the Port for use by its consultant) that detailed the types of rail and other track material on the Line. Two salvage companies, L.B. Foster and Unitrac, sent experienced experts to physically inspect the Line. *See V.S. Pettigrew* at 3-6, Attachments 1-2. In their separate, thorough inspections, Foster and Unitrac each determined for themselves the quality, quantity, and condition of the track assets, and gathered information necessary to determine the costs of removing and transporting track materials.

Based on their inspections and the information provided by CORP, Foster and Unitrac each submitted a firm offer to purchase the track assets. *V.S. Pettigrew* at 5-6, Attach. 1-2; *see San Joaquin Valley*, STB Docket No. AB-398 (Sub-No. 7X), Decision at 4 (Aug. 25, 2008) (accepting “credible, firm offer” from salvage company as “the best evidence of what this line would be worth in the marketplace” and therefore the most reliable measure of the line’s NLV). Foster and Unitrac each developed its purchase offer based on actual *current market prices*, *i.e.*, prices for which they have actually recently sold rail metals and materials. *See V.S. Pettigrew* at 5-7, 11-17, Attach. 1 at 1-2, Attach. 3-4.⁹ By definition, these actual purchase offers – which are

⁹ Unitrac also provided highly confidential proprietary information (including actual invoices and purchase orders as well as its own price list) that support the market prices it used to develop its purchase offer. *See Pettigrew* workpapers (Confidential)

the prices that knowledgeable, willing, and able buyers Unitrac and L.B. Foster stand ready to pay today – establish the actual “fair market value” of the Coos Bay Subdivision track assets.

See, e.g., United States v. 564.54 Acres of Land, 441 U.S. at 511.

In contrast, the Port offers only a made-for-litigation NLV estimate developed by its hired consultant. *See* Feeder Line Application Exhibit 6, V.S. Gene Davis. As CORP’s witness Mr. Pettigrew indicates, the difference between such a theoretical valuation estimate and real world purchase offers is dispositive:

[The] difference between the purchase offers I received from contractors Unitrac and LB Foster and the NLV estimate generated by the Port’s consultant is that the contractors’ bids are firm, real-world commercial *offers* to purchase the assets. CORP could accept either one of the offers, and the selected offeror would be financially responsible for salvaging the Coos Bay Subdivision at the offered price. Therefore, both Unitrac’s and LB Foster’s bids are disciplined by market requirements. The Port’s estimate is theoretical, created solely for purposes of this litigation. Because there is no possibility that the Port’s consultants will be expected to perform the salvage work at any price, let alone the price they generated for this proceeding, they are not subject to such market constraints, and have every incentive to deflate the NLV of the Line.

V.S. Pettigrew at 8; *see id* at 4 (“[T]hese actual firm purchase offers, developed by two experienced companies engaged in the business of salvaging rail lines, provide the actual, market-based, net liquidation value of the Coos Bay Subdivision. They are far superior to the theoretical estimate prepared by the Port’s litigation consultant . . .”).¹⁰ Thus, even if the Port’s estimated NLV were based on rigorous, robust analysis and well-supported – which it is not – such a “mere valuation” is inherently inferior to CORP’s two “firm offer[s] to purchase the line”

¹⁰ Mr. Pettigrew also calculated NLVs of the track assets of the Line using AMM Chicago metals index prices for the period of this proceeding. Those alternative estimates illustrate that even the AMM prices for July and August 2008 generate a far higher track asset NLV than the artificially low estimate presented by the Port’s expert. *See* V.S. Pettigrew at 16-18; Attachments 1- 2, 5-7.

(and on additional bid by RL Staton Companies of Eugene, OR to salvage the bridges) as proof of the Line's market value and NLV. *See SJVR Abandonment* at 5; . *See generally Burlington Northern Railroad Company – Abandonment Exemption – In Sedgwick, Harvey, and Reno Counties, KS*, STB Dkt. No. AB-6 (Sub-No. 358S) (June 30, 1994) (citing cases) (if offeror does not present more specific, reliable, and verifiable evidence than carrier, the Board will accept the carrier's valuation evidence).

Based upon the binding purchase offers obtained by CORP, the NLV of the track assets is no less than \$19,580,204. This amount represents the higher of two firm purchase offers provided to CORP in a competitive bidding situation. In the absence of some countervailing consideration not present here, CORP would accept the Unitrac offer if the Board granted it abandonment authority. Accordingly, the fair market value of the track assets of the Line – and the constitutional minimum that must be paid for those assets if the Board grants the Port's Application – is embodied in Unitrac's offer of \$19,580,204.

2. The Port Has Failed To Demonstrate That Its Consultant Is Qualified To Develop A Track Asset NLV Or That The Sources And Methods He Used Here Are Relevant And Reliable.

The Port's witness, Mr. Davis, does not appear to have any actual experience in valuing, salvaging, supplying, distributing, or purchasing railroad track materials. *See V.S. Pettigrew* at 9. Experience in these areas is an important prerequisite for qualification as an expert witness concerning the NLV of 111 miles of rail line. Some of the flawed assumptions and errors in Mr. Davis' analysis may be attributable to his lack of experience in rail salvage operations. Compounding this lack of relevant experience, Mr. Davis based his NLV estimate not on a thorough physical inspection of the Coos Bay Subdivision, but rather on a helicopter flyover and observation of the line from highways and road crossings. *See V.S. Pettigrew* at 8. As L.B. Foster's general manager summarized in his evaluation of Mr. Davis' estimate,

a complete walking inspection of the line . . . is the only method that can accurately assess the condition of the track components. The limited “spot checking” approach used by Mr. Davis . . . cannot generate an accurate assessment of the NLV of a line of rail extending more than 111 miles.

See id Attachment 2.

Mr. Davis’ estimates regarding the NLV of two bridges he assumed would be removed, which he used to reduce the estimated NLV of the Line by \$7.5 million, have even less foundation and support. As an initial matter, it is not at all certain that his assumption that the bridges would have to be removed is correct. Further, the entire stated basis for his estimate of the net cost of removing two bridges is (i) a track chart from an unidentified source; (ii) general statements and assertions about tasks that are sometimes involved in removing bridge (and oftentimes not); and (iii) a permitting cost estimate by a firm whose experience and qualifications are not described. *See* V.S. Davis at 10-12. Moreover, the permitting cost estimate adopted by Mr. Davis makes clear that it was based on an entirely different bridge (the Coos Bay Bridge) over an entirely different body of water (Coos Bay), and does not even apply to the two bridges in question (over the much narrower Siuslaw and Umpqua Rivers). *See* Port Feeder Line Application at 131 (memorandum presenting estimate begins with “As requested, we have based our estimate on the *Coos Bay Railroad Bridge only*.”) (emphasis added). In sum, Mr. Davis may have oversold his bridge removal cost estimates when he stated they were “very preliminary and require further refinement in the event of liquidation.”

3. The Port’s Estimate Significantly Misclassifies Valuable Track Assets.

The Port’s consultant misclassified steel track assets, which caused him to significantly undervalue those assets. “Relay” quality rail can be re-installed and re-used on another railroad line. Because relay rail can be put to direct productive re-use, it commands a significantly higher market price than re-roll or scrap rail. *See, e.g.*, Application, V.S. Davis at 5. Although the

Port's witness concedes that relay rail has "the highest value" and that main line rail generally falls into three classes, he applies an across-the-board assumption that none of the rail on the entire 111-mile length of the Coos Bay Subdivision is relay quality. *See* V.S. Davis at 5. This assumption is flatly contradicted by the Foster and Unitrac purchase offers, both of which are based on full physical inspections of the Line. *See* V.S. Pettigrew Attachments 1, 3-4 (spreadsheets underlying purchase offers show salvage companies found large quantities of relay rail on the Line); *id.* at 10 (indicating it would be extremely unlikely that any line of railroad in excess of 100 miles would contain no relay quality rail). For example, Unitrac's inspection determined that nearly one quarter of all rail on the Line is relay quality. *See* V.S. Pettigrew at 10. Unitrac's evaluation of the Port's estimate concluded that the Port misclassified approximately 5,855 tons of relay quality rail as lower value re-roll or scrap quality. *See* V.S. Pettigrew at 10, Attach. 1 at 4.

In support of his implausible assumption that there is no relay quality rail anywhere on the entire Line, Mr. Davis offers three rationales. None provides any support whatsoever for his assumption. First, Davis makes a general and erroneous assertion that rail having greater than ¼" wear cannot be classified as relay rail. *See* V.S. Pettigrew at 10. Even if this general observation were correct, it is untethered to any evidence regarding the actual amount of wear in rail on the Line. The Port's witness does not claim that he observed or otherwise identified *any* rail as having that amount of wear. *Cf.* V.S. Pettigrew Attach. 2 at 2 (rail classified relay quality for purchase offer did not include any rail with greater than ¼" wear).

Second, Davis asserts that some of the rail appeared to date to the 1950s and 1960s, and that some of it appeared to be "second-hand." This is another red herring. Neither the age of the rail nor the fact that it may have been used in more than one location determines the quality of

that rail. *See* V.S. Pettigrew at 10 (age of rail would only be potentially relevant if rail manufactured prior to 1936); *id.* Attachment 1 at 3 (“As Mr. Davis should know, the age of rail, or the fact that it may have been moved from a different location, by themselves, have nothing to do with whether that rail is relay quality”).

Third, he simply asserts that his “limited on-site inspection” and “limited information” “did not warrant” classifying any rail as relay quality. V.S. Davis at 5. This simply shows that his inspection was insufficient to provide a meaningful evaluation of the quality of the rail and track assets on the Line. Although Mr. Davis conceded that “some of the Line’s rail could actually be relay rail,” he refused to even assume that, consistent with common experience, at least some of the rail is relay quality. *See* V.S. Pettigrew at 10, Attachment 1 at 3. Thus, based on a professed absence of actual knowledge, the Port’s consultant chose the assumption that is least plausible, but most favorable to the Port – that the entire Line contains no relay rail.

The Port’s baseless assumption that relay quality rail on the Line is actually lesser quality re-roll or scrap rail results in an understatement of the value of the track assets by approximately \$5.5 million. V.S. Pettigrew at 11. Correction of that single erroneous assumption alone would increase the Port’s NLV estimate from \$8.9 million to approximately \$14.4 million. *See id.*

As described in more detail in the Pettigrew verified statement and supporting materials, Mr. Davis also misclassified substantial portions of the Line’s re-roll rail, relay tie plates, and relay quality other track materials (“OTM”). *See* V.S. Pettigrew at 9-11. Those misclassifications result in substantial additional understatement of the NLV of the track assets. *See id.* at 9-11, Attachment 1 at 3-5 & Charts 1-3.

4. The Port's Estimate Used Historical Metals Index Prices That Substantially Understate Current Market Prices.

The scrap metal prices used by the Port to generate its NLV estimate are fundamentally infirm for at least two reasons. First, the Port used outdated price data, which substantially understate the current value of the track assets. Second, the price index the Port states that it used to estimate prices itself understates actual current market prices.¹¹

The Port, which filed its Application on July 11, 2008, used scrap and re-roll rail and OTM prices from *three months earlier* to estimate the current value of scrap and re-roll quality track assets. *See* V.S. Davis at 8-9 (valuations based on index prices and other sources as of April 18).¹² Scrap metals prices, including the American Metals Market ("AMM") index relied upon by the Port, are published every day. There is simply no justification for using historical price estimates. The Port's use of stale prices is all the more surprising given its witness' express acknowledgement that changes in steel market prices "would directly affect the value of [track] materials." V.S. Davis at 9. As discussed below, the Port's intentional use of outdated historical metals price estimates resulted in a dramatic understatement of the current value of non-relay quality rail and OTM assets.

¹¹ Attachment 1 to Mr. Pettigrew's testimony calculates the NLV of the Line using Mr. Davis' methodology and assumptions and substituting only the corrected rail quality classifications and market prices, and assuming the Siuslaw and Umpqua bridges would remain in place. The resulting NLV of the track assets of the Line would be \$24,551,373. *See* V.S. Pettigrew, Attachment 1, charts 1-3.

¹² Even the artificially low historical price Davis used is unsupported. He did not explain how he calculated the prices, and he did not provide any information supporting those calculations. He states that he relied upon the "American Metals Market, L.B. Foster, and RLBA estimates" as of April 18, 2008. V.S. Davis at 9. However, the prices used in the estimate do not align with relevant contemporaneous AMM-Chicago prices. *See* V.S. Pettigrew at 13. L.B. Foster's General Manager advised CORP that he would not use prices in the range used by the Port for purposes of determining current market values. *See id.* at 12-13. The other source cited by RLBA's Davis, "RLBA estimates," is redundant. His hybrid estimate, however derived, is an RLBA estimate.

Scrap steel prices (which, for this purpose, include prices paid for re-roll rail, scrap rail and scrap OTM) in the Chicago market have increased considerably over the last two years. Since April 2008, however, those prices have increased sharply. *See* V.S. Pettigrew at 11-12. For example, the benchmark AMM-Chicago Number 1 Busheling index -- the index that most closely approximates actual market prices for scrap rail-- increased by approximately 42% from the date used by the Port (April 18, 2008) and August 22, 2008. *Id.* at 12. Because the Port used outdated prices, its estimate very substantially understated the current market value of the steel track materials. *See* V.S. Pettigrew at 12-14, Attachment 1, Charts 1-3 (comparison with current market prices used to develop Unitrac's purchase offer); *compare* V.S. Davis at 8-9 *with* V.S. Pettigrew Attachments 1-8 (current prices used by Unitrac and Foster for purchase offers, AMM-Chicago index prices for July 11, 2008 and August 22, 2008). The real world purchase offers from Foster and Unitrac, in contrast, used actual current market prices, which are substantially higher than the AMM-Chicago index. *See* V.S. Pettigrew at 15, Table II (comparing RLB price estimates with market prices used by purchase offers).

There is no question that an NLV for purposes of a feeder line application must use market prices prevailing at the time of the taking, and not at some arbitrary point prior to the filing of the proceeding, cherry-picked by the Applicant to attempt to take advantage of lower historical prices. *See, e.g., Toledo, Peoria & Western Railway v. STB*, 462 F.3d 734 (7th Cir. 2006) (affirming STB decision to average track materials prices over the period of the proceeding);¹³ *CSX Transportation Inc.—Abandonment Exemption – in LaPorte, Porter and*

¹³ It is important to note that the *TP&W* Court rejected the appellant's argument that the Board's use of an average price over the course of a number of months constituted an unconstitutional taking without just compensation as *waived* for failure to raise the argument before the STB. *TP&W*, 462 F.3d at 747. The Court did not hold that averaging prices over several months would not constitute a taking, it simply did not reach the question. *Id.* The Court also

Starke Counties, IN, STB Dkt. No. AB-55 (Sub-No. 643X) (April 30, 2004) (setting track materials NLV using higher prices at conclusion of proceeding, rather than lower prices proffered at beginning of proceeding). The dispute in *TP&W* and *LaPorte* was which of the prices prevailing *during the course of the STB proceeding* should be used to compute the NLV of the track assets. No party to any of those cases contended—as the Port does here—that the Board should reach back into time to select a price from a period pre-dating the initiation of the abandonment proceeding. Indeed, if the Board were to use a lower historical price to set the NLV of the track assets, it would be effecting an unconstitutional taking without just compensation. *See e.g., Kirby Forest Industries v. United States*, 467 U.S. 1, 9-14 (1984). There is thus no serious question that the lower historical prices used by the Port's expert may not be used to calculate the NLV.

If the Board were to calculate an NLV based on any metals values other than the purchase offers submitted, it should use the actual current market prices reflected in those offers, not an index value. Particularly in recent years, indices such as the AMM Chicago scrap metal index have tended to understate actual market prices for scrap and reroll rail and OTM, substantially and consistently. *See V.S. Pettigrew* at 15-18; Attachment 1 at 2-3. Scrap rail materials are in very high demand today, and AMM Chicago index prices (particularly those purporting to represent prices of track materials) do not reflect the actual prices paid for rail and scrap. While AMM Chicago prices provide convenient benchmarks for following general trends in scrap metal prices, they do not reflect the contemporaneous prices obtained in the market. *See id.*¹⁴ Using AMM index values to estimate the NLV of the scrap rail and OTM of the Line

distinguished *LaPorte*, in which the Board adopted the prevailing metals prices at the end of the case, as involving a short time period. *Id.* at 748-49.

¹⁴ Mr. Pettigrew, who monitors metals markets closely as the head of purchasing for CORP and

would substantially understate the actual market value of those assets, and thereby deprive CORP of the constitutional minimum value for those assets.

Nevertheless, because the STB has used AMM index prices to value track assets in some prior abandonment cases, CORP developed NLV estimates based on AMM Chicago metals index prices at three relevant times: The date of filing of the Feeder Line Application (July 11, 2008); the most recent available date available (August 27, 2008), and the average of those two prices. *See* V.S. Pettigrew at 17-18, Attachments 5-7.¹⁵ If the Board were to decide – contrary to the strong weight of precedent regarding the use of actual purchase offers rather than some substitute -- to use index prices rather than actual purchase offers, it should use the AMM Chicago prices prevailing during this proceeding. *See id.* (showing track asset NLVs reflecting AMM Chicago prices for June 11, August 27, and the average of those two dates); *see also* Pettigrew workpapers (including copies of relevant AMM Chicago indices).

5. The Port's Estimate Grossly Overestimates The Cost Of Removing Bridges Over The Siuslaw And Umpqua Rivers.

The Port, through the verified statement of consultant Gene Davis, asserts that the Coast Guard will “definitely require” removal of the bridges over the Umpqua and Siuslaw rivers (V.S. Davis at 10), and estimates that the net cost of removing those spans would be \$7,529,000. *Id.* at 12. Mr. Davis’ analysis is based on erroneous assumptions and grossly inflated estimates, and should be rejected. First, Mr. Davis incorrectly assumes that the bridges “definitely” will have to be removed. In fact, it is not at all clear that removal would be required. The Board “does not

40 other RailAmerica shortline and regional railroads, notes that even the highest AMM Chicago index prices are useful today primarily as an indicator of the absolute floor on reroll rail and scrap rail and OTM prices. V.S. Pettigrew at 15-17.

¹⁵ Mr. Pettigrew used the August 22, 2008 index price in his estimated NLV. As of the date of this filing, however, the most recent AMM Chicago scrap metals index available was for August 27, 2008. The relevant AMM Chicago index prices for August 22 and August 27 were the same, so the August 27 scrap price used by Mr. Pettigrew is interchangeable with the August 22 price.

typically require the removal of railroad bridges and other structures when a line is approved for abandonment.” Environmental Assessment at 10. And the Coast Guard would not order removal of the bridges if, for example, the right-of-way were converted for trail use. Second, even if the bridges were required to be removed, Mr. Davis erroneously presumes that the Coast Guard would demand removal of portions of the bridges not spanning “navigable waters”—areas that are outside the Coast Guard’s jurisdiction. Finally, Mr. Davis’ estimates of the cost of removing these two bridges—like so many of the estimates submitted by the Port in this proceeding—are highly inflated.

It bears repeating that the Port has the burden to prove the net liquidation value of the line. *See McCloud Ry. Co.—Abandonment And Discontinuance Of Serv. Exemption—In Siskiyou, Shasta, And Modoc Counties, CA*, STB Docket No. AB-914X, 2006 WL 2459083, at *3 (Aug. 25, 2006); *see also San Pedro R.R. Operating Co., LLC—Abandonment Exemption—In Cochise County, AZ*, STB Docket No. AB-1081X, 2006 WL 963539, at *3 (April 13, 2006) (“The burden of proof is on the offeror, as the proponent of the requested relief.”). Therefore, it is the Port that must provide reliable and convincing evidence to demonstrate that the entire bridge span must in fact be removed. In the absence of such evidence, the Board may not assume that the bridge will have to be removed in its entirety.

a. The Port’s Assumption That The Bridges Will Be Removed Is Not Sufficient To Meet Its Burden.

Mr. Davis’ first error is to assume that the Coast Guard will “definitely require” the entire spans of the Umpqua and Siuslaw River bridges to be removed as obstructions to navigation. Mr. Davis bases this assumption on his interpretation of a June 23, 2008 letter from Austin Pratt, Chief of Coast Guard District 13’s Bridge Section. *See Application* at 130. Mr. Davis’ assumption that removal is “definite” is unsupported by evidence or the law. It certainly does

not meet the Port's burden to produce specific, reliable and convincing evidence in support of its valuation.

As Mr. Pratt's letter notes, the Coast Guard has discretionary "authority to require that bridges or causeways be removed when the owners discontinu[e] the use of these structures for transportation purposes." *Id.* Mr. Pratt makes clear that the Umpqua and Siuslaw bridges would "qualify" for removal only "*if land traffic use is abandoned.*" *Id.* This is consistent with the Coast Guard's general policy that "[a]ll bridges are obstructions to navigation and are tolerated only as long as they serve the needs of land transportation while allowing for the reasonable needs of navigation." *See* 33 C.F.R. § 116.01(a); Coast Guard Bridge Administration Manual (found at http://www.uscg.mil/directives/cim/16000-16999/CIM_16590_5C.pdf) (hereinafter "Bridge Administration Manual") at page 1-1

Abandonment of the Coos Bay Subdivision would not necessarily mean the end of "land traffic use" over these bridges, however. As the Board explained in its recent Environmental Assessment, "[t]he National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad right-of-way that otherwise would be abandoned." Environmental Assessment at 8-9. The Board went on to recognize that "bridges can . . . be an important component of rail banking lines approved for abandonment under the Trails Act." *Id.* at 10. If the Coos Bay Subdivision were converted to trail use, the Siuslaw and Umpqua bridges would continue to "serve the needs of land transportation" over that trail and not be subject to Coast Guard removal. 33 C.F.R. § 116.01(a). Indeed, preservation of the bridges would be essential to any plan for use of the Coos Bay Subdivision's right-of-way as a trail.

The prospect of converting the right-of-way to a trail is not mere speculation. The Port acknowledges the “natural beauty” of the right of way (Application at 48) and it has high potential for use as a unique land- and water-based recreational trail. See CORP Environmental Report at 7. Indeed, the Trust for Public Land has expressed to CORP its interest in discussing the possibility of purchasing and rail banking the corridor in the event that the Line is abandoned. See V.S. Pettigrew at 5, 18, Attachment 10. In short, there is a significant likelihood that the bridges would continue to be used for land transportation after the discontinuance of rail service. In the event of that continued land transportation, the Coast Guard would not require the removal of the bridges.

Even if the right-of-way were not converted to trail use, it is by no means certain that the Coast Guard would require removal of the two bridges. While the Coast Guard has authority to remove abandoned bridges over navigable waters, it does not summarily require removal of all bridges no longer used for land transportation purposes. Instead, according to the Coast Guard’s Bridge Administration Manual, “[e]ach individual case must be treated according to the particular set of facts and circumstances surrounding it.” Bridge Administration Manual at 1-7. Importantly, Coast Guard policy is to require removal or alteration of bridges only where the benefits to be obtained outweigh the costs. See Bridge Administration Manual at page 7-3 (“The Coast Guard may determine a bridge to be unreasonably obstructive to navigation if the navigational benefits that would accrue as a result of altering the bridge equal or exceed the cost of bridge alteration.”). It is impossible to determine in advance how the Coast Guard might exercise its discretionary authority to remove bridges in any particular case or set of

circumstances. For example, if parties raise concerns about the potential environmental effects of bridge removal, the Coast Guard might choose to leave the bridges in place.¹⁶

In light of the potential for trail use and the Coast Guard's discretion to order bridge removal, it is by no means certain whether bridge removal would be necessary. What is certain is that Mr. Davis's facile assumption that the bridges would "definitely" be removed is incorrect and ignores limits on the Coast Guard's jurisdiction and authority, and its discretion in exercising that authority. Accordingly, the Port's assertion that the bridges would "definitely" be removed is speculation. Because the Port has not carried its burden to demonstrate that bridge removal is a necessary consequence of the liquidation of the line, the net costs of bridge removal should not be considered in determining the NLV of the track assets of the Line

b. Even If The Coast Guard Were To Require Removal, Such Removal Would Be Limited to Portions Spanning Navigable Waters.

Even if the Coast Guard were to decide that the bridges must be altered or removed to address navigational concerns, Mr. Davis makes a second critical error in his analysis. He presumes that the entire bridge spans, *including those portions beyond the banks of the Rivers' waterways, and not over navigable waters*, must be removed. The Coast Guard's jurisdiction over bridges (and bridge alteration and removal) is limited to those portions of bridge structures which span "navigable waters." See 33 C.F.R. § 2.36(a)(3) (defining "navigable waters"); Bridge Administration Manual at pages 1-2 (defining "navigable waters"), 1-4 (defining "bridge")

¹⁶ It is also worth noting that the authority the federal government gave CORP's predecessors to construct the Umpqua and Siuslaw bridges was not predicated on continued transportation over those bridges (as it is with many other bridges). See, e.g., United States Department of War Permit for Construction of Bridge over Siuslaw River (Jan. 13, 1913); Department of War Permit for Construction of Bridge over Umpqua River (Dec. 11, 1912) (copies in Pettigrew workpapers). Thus, whatever the Coast Guard's authority under permits it issued, the permits for the bridges in question pre-date the establishment of the Coast Guard.

as “a structure over, on, or in the navigable waters of the United States”). For purposes of the Coast Guard’s jurisdiction, “navigable waters” are defined, in relevant part, as “[1]internal waters subject to tidal influence; or internal waters not subject to tidal influence, (a) which are or have been used, or are or have been susceptible for use, by themselves or in connection with others as highways for substantial interstate or foreign commerce, notwithstanding obstructions that require portages . . .” 33 C.F.R. § 2.36(a); Bridge Administration Manual at 1-2. This definition is specifically distinguished from the broader definition of “navigable waters” under the Clean Water Act, which includes wetlands and other waters. *See* 33 C.F.R. § 2.36(b). Thus, the Coast Guard’s authority only extends to those portions of the bridge structure which are in, on or over traditional “navigable waters.”

Accordingly, any Coast Guard order requiring removal of the bridges would extend, at most, to those portions of the bridges in, on, or over navigable waters, and it is only those portions that should be included in costing the removal of the bridge. This reading of applicable law and regulations is consistent with the position of the Coast Guard headquarters office responsible for bridge policy. *See* V.S. Pettigrew at 5 and Attachment 9. (Email response from Alcsia Steinberger, Chief, Alterations & Drawbridge Operations, U.S. Coast Guard, indicating that Coast Guard removal requirement would be limited to areas between the banks of the navigable river). And, it is consistent with the view of the same Coast Guard official who sent the letter to the Port, that any Coast Guard bridge removal requirement would be limited to spans across navigable waters.

Despite this limitation on the Coast Guard’s jurisdiction and authority, Mr. Davis simply assumes that CORP would be required to remove both bridges in their entirety, including long wooden trestle approach segments that have nothing to do with the navigable waters of the

rivers. As explained in the Statement of Alan Pettigrew, large portions of the Siuslaw Bridge are not over the river at all, but rather cross adjacent land and a road. *See* V.S. Pettigrew at 18-22; V.S. Maloney at 2, 7-8, 17. *See also* CORP Abandonment Application, STB Dkt. No. 515 (Sub-No. 2), Exhibit 4 at 33 (picture of portion of Siuslaw River Bridge section over land). That land is certainly not “navigable water,” and is outside the Coast Guard’s jurisdiction and authority to require removal ¹⁷ Mr. Davis’s inclusion of these approach sections leads to a significant overestimate of bridge removal costs, and is one more reason to reject his estimate. *See* V.S. Maloney at 2, 17.

c. The Port’s Cost Estimates For Bridge Removal Are Highly Inflated.

Should the Board conclude that the bridges would necessarily be removed if the Line were abandoned, it should use the actual bids obtained by CORP as the best evidence of the real world net cost of such removal. CORP’s two actual bids for removal of the relevant portions of the bridges, and a separate evaluation of the Port’s superficial estimate by bridge demolition expert (Mr. Maloney), show that the Port’s estimated cost for bridge removal is greatly inflated. Instead of the Port’s estimate of \$7.5 million, a more reasonable estimate of the cost of removal of the bridge spans over the navigable waterways is approximately \$ 2 million. *See* V.S. Pettigrew Attachments 3, 9; *see generally* V.S. Maloney.

Here again, CORP obtained actual offers to perform the work from experienced contractors who stand ready to perform should CORP accept their offers. L.B. Foster included removal of the two bridge spans over the Siuslaw and Umpqua Rivers navigable waterways as part of its purchase offer. *See* V S. Pettigrew Attachment 3. Foster determined the cost of

¹⁷ Mr. Davis seems to acknowledge this common sense conclusion when he states that the Port’s Martin Callery believes the Coast Guard would require removal of at least “the swing span portions of those bridges.” *See* V.S. Davis at 10.

removal would be \$2,000,000. *See id.* CORP also obtained a second bid from RL Staton Companies, an experienced bridge demolition and removal company in Eugene Oregon. Based on an actual inspection of the bridge, Staton submitted a bid totaling \$2,065,790 for the removal of the spans over the navigable waterways of the Siuslaw and Umpqua Rivers. *See V.S. Pettigrew* at 19-20 and Attachment 9. These two real-world, arms-length offers from experienced contractors, both based upon actual inspection of the bridges, provide a reliable measure of the cost of removing those bridges. *See e.g. SJVR*, STB Dkt. No. AB-398 (Sub-No. 7X) slip op. at 4; *Mississippi Tennessee Holdings*, STB Dkt. No. AB-868X, slip op. at 6 (served Nov. 2, 2004). The fact that the bridge component of the LB Foster purchase offer and the independently developed RL Staton bid are only \$ 66,000 apart provides further confirmation that they represent a reasonable measure of the market-based cost of removing the bridges. The Board should accept the average of these two offers as the best evidence of the actual net cost of removing the bridge spans.

The superficial, unsupported, and conclusory estimate submitted by the Port's consultant is wholly inadequate to meet the Port's burden of presenting specific, reliable or a verifiable evidence to rebut CORP's bridge removal cost estimate. *See Burlington Northern RR*, STB Dkt. No. AB-6 (Sub-No. 358X) (June 30, 1994). As a threshold matter, it does not appear from Mr. Davis' resume that he has any actual experience in the specialized area of bridge demolition and removal, which is significantly different from bridge construction or maintenance. His lack of experience and qualification may be partially responsible for the brevity of his analysis. Mr. Davis' entire bridge cost analysis consists of approximately 2 ½ pages of text and two pages of workpapers. Although the portion of his statement devoted to bridges consists primarily of generalized, unsupported statements about bridge removal that are not tied to the specific bridges

at issue, he nonetheless concluded that the net cost of removing the two bridges would exceed \$7.5 million.

While the remainder of Mr. Davis NLV estimate is flawed in numerous important respects, those flaws pale in comparison to his wholly inadequate and unsupported bridge cost estimate. Ironically acknowledging these flaws, the Port's consultant cautioned that his "very preliminary" estimate – provided for the sole purpose of estimating the liquidation value of the bridges – "would require further refinement in the event of liquidation " V S Davis at 12.

Despite the manifest insufficiency of the Port's bridge removal cost estimate, CORP retained another independent expert to evaluate the Port's estimate, which is more than three times larger than either of the two actual bids provided by LB Foster and RL Staton Tim Maloney is regional manager of Edward Kraemer & Sons, a company that specializes in the demolition, rehabilitation, and construction of highway and railroad bridges. See V.S. Maloney at 1. At the outset, Mr. Maloney determined that the "high level of generality of Mr. Davis's bridge cost estimate and supporting material provided by the Port preclude meaningful direct evaluation or testing" of that estimate. V.S. Maloney at 3-5.

The lack of meaningful explanation of, or support for, Mr. Davis' generalized estimate would compel its rejection even if CORP had not offered better evidence. See *Glenwood & So. R.R. Co.—Feeder Line Acquisition—Arkansas Midland R.R. Co. Line Between Gurdon & Birds Mill, AR*, I.C.C. Docket No. 32613 (Mar. 2, 1995) (rejecting feeder line application in part because applicant failed to provide "an explanation of [its] net liquidation value estimate," "evidentiary support for the unit costs of relay and scrap materials," or "support for its real estate estimate of \$200 per acre for land") (appeal from Director's decision). Put differently, the Port has not made out a *prima facie* case for its conclusory estimate of the net cost of bridge removal.

The Board need not consider the Port's net bridge cost evidence any further, because its lack of analysis or support for its estimates compel the conclusion that it is unreliable and wholly inadequate to meet an Applicant's burden of proof. *See id.*

If the Board seeks further evidence of the infirmity of the Port's estimate, that evidence is provided by the testimony of Mr. Maloney. Despite the very limited amount of information provided in the Port's bridge cost estimate, Mr. Maloney identified several key errors in Mr. Davis' analysis. *See V S. Maloney* at 5-8. Those errors are detailed in Mr. Maloney's statement, but examples include:

- Using the same cost for removal of rail and ties from both bridges although one is less than half as long as the other;
- Rounding tonnages up to the nearest hundred, resulting in substantial overstatement of tons of concrete and wood to be removed; and
- Overestimating the cost of lead paint abatement by \$1.26 million.

See V.S. Maloney at 3-8.

One specific error in the Port's bridge cost estimate requires further discussion. The Port significantly overestimates the permitting costs for bridge removal. In the first place, the Port's estimate of permitting costs for the Siuslaw and Umpqua River bridges is drawn entirely from a memorandum estimating costs for *a different bridge*, over an entirely different body of water—the Coos Bay Bridge. Application at 131; *see V S. Maloney* at 7. Moreover, the Port provided no information about the qualifications or experience of the author of the memorandum, or how he developed his assumptions and estimate. This unexplained, unsupported memorandum regarding estimated permitting costs that are expressly limited to an entirely different bridge, does not constitute reliable evidence of costs of removing the Siuslaw or Umpqua River bridges.

In addition, the Port's estimate of permit costs is inflated in several respects. First, the Port assumes \$100,750 in National Environmental Policy Act ("NEPA") costs, claiming that an

Environmental Assessment would need to be filed with the STB as “lead agency.” Application at 131-32. This is incorrect. As an initial matter, there is no basis to assume that the STB would be the “lead agency” for NEPA review (*see* Application at 131); as the Board recently observed in the Environmental Assessment for CORP’s abandonment application, it “does not typically require the removal of railroad bridges and other structures when a line is approved for abandonment.” Environmental Assessment at 10. Moreover, the Army Corps of Engineers would not be required to prepare an environmental assessment, as bridge removal work is authorized under Nationwide Permit 22. *See* 72 Fed. Reg. 111092, 11184 (Mar. 12, 2007) (authorizing by nationwide permit “Temporary structures or minor discharges of dredged or fill material required for . . . the removal of man-made obstructions to navigation”); *see also id.* at 11117-11118 (clarifying that NWP 22 extends to removal of bridges and trestles). Having issued a nationwide permit, the Corps has already completed any necessary NEPA analysis.¹⁸

Other “permitting cost” items asserted by the Port are likewise overstated. *See* V.S. Maloney at 7-8. It is not reasonable to expect that environmental monitoring of the bridge removal would require “one site visit per week for one year” at a cost of \$58,500. Application at 131-32. Removal of the two bridges would take a few weeks at the most. *See* V.S. Pettigrew Attach. 8 (R.L. Staton bridge demolition bid, providing time schedule for project). After those few weeks, there would be no removal work to “monitor,” because the work would be completed. And the predicted \$56,420 in costs for 400 hours of unexplained “project management” is far out of proportion to that necessary for removing two bridges. *See* V.S.

¹⁸ *See id.* at 11095 (“The NWPs authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment and satisfy other public interest review factors. The NWPs do not reach the level of significance required for an EIS. The Corps complies with the requirements of NEPA by preparing an environmental assessment for each NWP. When an NWP is issued, a Finding of No Significant Impact is also issued.”)

Maloney at 7-8. (Again, this overstatement is, in all likelihood, attributable to the Port's reliance upon an estimate for removal of the much larger bridge spanning Coos Bay.)

The Port's patently flawed estimate of the permitting costs of bridge removal are certainly not reliable evidence of such costs. CORP obtained a far more credible estimate from its independent consultants, who have extensive experience in NEPA review and obtaining necessary permits for bridge removal. *See* V.S. Maloney at 7-8 and Attachment 1. Based on that experience, CORP's expert determined that total permitting costs would be no more than \$75,000 for each bridge. *Id*

Mr. Maloney also developed a revised estimate of the cost of removing the bridges over the navigable waterway, using the Port's workpapers as a starting point and explaining the numerous differences between his estimate and the approach used by the Port's consultant. *See* V.S. Maloney at 8-17. Mr. Maloney, who has substantial experience in the removal and demolition of bridges over water, disagrees with nearly every identifiable cost and salvage value in Mr. Davis' workpapers. *See* V.S. Maloney at 8-16. Based on his analysis, Mr. Maloney developed an estimated net cost of \$2,849,064 removal of the spans of the bridges over navigable waters. While this number is somewhat higher than the \$2 -2.1 million bids from Foster and Staton for the same job, it provides additional confirmation that the Port's estimated cost of removing the bridges (\$7.5 million) is vastly overstated.

d. If The Board Assumes The Bridges Over The Waterways Would Be Removed, It Should Use the Actual Offers Provided To CORP As The Best Evident Of The NLV Of Those Bridge Spans.

If the Board decides to assume that removal of bridge spans over the Siuslaw and Umpqua River waterways would be required, it should use either L.B. Foster's actual purchase offer or Staton's actual bid as the net cost (NLV) of that removal. As demonstrated in this Response, the bridge cost estimate submitted by the Port is unsupported and unreliable. The

actual fair market value of the bridge removal is embodied in the Foster purchase offer and the Staton bridge removal bid. *See, e.g., United States v 564 54 Acres of Land in Monroe and Pike Counties, PA*, 441 U.S. 506 (1979) (fair market value is “what a willing buyer would pay in cash to a willing seller.”) (citing numerous cases for this well-established rule).

L. B. Foster’s purchase offer for the track assets includes a net cost of \$ 2 million for removing the spans of the two bridges. *See V.S. Pettigrew* at 7, 18-19. Thus the NLV of the track assets embodied in the Foster purchase offer – including removal of bridges – is \$17,599,000. *See id.* at 8, 18-19, Attachment 3.

To determine the NLV of the Unitrac purchase offer including removal of the bridges using the best market-based evidence, the Board would use the Unitrac offer, reduced by the amount of the Staton bid for removal of the spans over the navigable waterways. *See V.S. Pettigrew* at 6 (indicating that, if CORP accepted Unitrac’s offer and bridge removal were required, CORP could accept Staton’s bridge removal bid). Unitrac would then be responsible for removing and salvaging the track assets of the Line other than the bridge spans. Unitrac’s purchase offer would be unaffected, because it would be performing exactly the tasks it offered to perform, at the price it offered. Separately, Staton would remove the spans for the price it has offered. *See id.* The net value to CORP of this process would be the amount of Unitrac’s offer (\$19,580,204) less the amount of Staton’s bid to remove the bridge spans (\$2,065,790), or \$17,514,414. *See V.S. Pettigrew* at 5-6.

Thus, if the Board assumes bridge removal would be required, the fair market value of the track assets would be either the L.B. Foster offer of \$17,599,000, or the combined Unitrac/Staton net purchase offer of \$17,514,414. The similarity of these two market-based

NLVs, based upon independently developed, competitive offers from three separate experienced contractors, is further testament to their accuracy and reliability.

6. The Port Overestimates Transportation Costs

The Port's estimate also overstates the cost of transporting scrap rail and OTM to market for sale, primarily by substantially underestimating the lading weight of rail cars used to transport that material. *See* V.S. Pettigrew at 22-23. The lading weight of rail cars used to transport scrap track materials ranges from 95 to 105 tons. *See id.* The transportation costs calculated by the Port's witness, however, implicitly assumed a much lower lading weight of approximately 77 tons. *See id.* This clear error resulted in an overstatement of transportation costs, and thus an understatement of the NLV of the track assets of approximately \$442,385. *Id.* The Port also overestimated likely transportation costs when it assumed that all track material would be transported to Chicago. In all likelihood, relay rail would be stored in or near Eugene and then shipped to the locations of customers who purchased the relay rail. *V.S. Pettigrew at 22-23.* The Port's erroneous assumption that all of the track on the Line is scrap rail that would be transported from Oregon to Chicago resulted in an additional overstatement of transportation costs of at least \$140,000. *See id.* These two erroneous assumptions result in a net understatement of the NLV of the track assets by at least \$582,385. *See V.S. Pettigrew at 21-23*

7. The Port Overestimates the Proportion of Track Materials That Would Be Lost During Salvage.

Finally, the Port's estimate substantially overestimates the percentage of scrap OTM that would be "lost" during salvage. Mr. Davis assumes that fully 20 percent of those materials would be lost during salvage. Based on the real world experience of Mr. Pettigrew, this assumed loss factor is much too high. *See V.S. Pettigrew at 23.* A more realistic assumption would be that five (5) percent of OTM scrap material from the Line might be lost (or otherwise be

unusable for scrap resale) in salvage operations. *See id.* at 23, Attachment 2 at 3. Correcting this overstatement and applying market prices would increase the NLV of the Line by approximately \$1,608,540. *See V.S. Pettigrew* at 23.

VI. The Port's Demand That CORP Pay For Tunnel Rehabilitation Costs Is Unprecedented And Unwarranted.

The Port's demand that the Board require CORP to rehabilitate tunnels on the line before selling the line to the Port is legally groundless and predicated on a fundamental misstatement of the facts. The Port is effectively requesting that the Board subtract the cost of repairing the tunnels from the NLV of the Line – an action that would be contrary to Board precedent, the governing statute, and the U.S. Constitution. The Port cites no legal support for such an unprecedented action.

The factual premise underlying the Port's request is simply wrong. CORP has not "neglected" or "deferred maintenance" on the Coos Bay Subdivision. Application at 48-49. To the contrary, CORP's maintenance expenditures on the line have far exceeded industry norms. Indeed, less than a year before it was forced to embargo the line because of tunnel conditions, CORP spent \$1.7 million repairing one of the very tunnels that the Port claims CORP "neglected." The Port's assertion that the tunnels would not have deteriorated had it not been for supposed "deferred maintenance" – an assertion that it never supports with any evidence – is wrong. The current condition of tunnels on the Coos Bay Subdivision is attributable to the fact that they are more than a century old, not deficient maintenance during the time the line has been owned by CORP.

A. There Is No Legal Basis For Reducing The Net Liquidation Value of the Line.

The Port's demand that CORP pay for tunnel repairs before selling the line to the Port violates the legal framework Congress created when it established the feeder line program. The

premise of feeder line proceedings is that the applicant must pay the carrier the constitutional minimum value of the property the applicant is taking—here, the NLV of the Line. *See* 49 U.S.C. § 10907(b)(2). The question in this proceeding is not the Coos Bay Subdivision’s value as an operating rail line, for there is no dispute that the Line has been losing substantial sums of money and has no value as a going concern. The question is the value of the rail assets if CORP were to liquidate them on the open market. The statute—and the Constitution—prohibit the Board from ordering the sale of the line for anything less than NLV. *See San Pedro R.R. Operating Co.—Abandonment Exemption—in Cochise Cty, AZ*, STB Docket No. AB-1081X (Apr. 13, 2006) (“the Board may not set a price that is below the fair market value of the line”); *see also Kansas City So. Ry. Co.—Abandonment Exemption—Line in Warren Cty., MS*, STB Docket No. AB-103 (Sub-No. 21X) (May 20, 2008), slip op. at 4 (“The Fifth Amendment to the Constitution provides that private property shall not be taken for public use without just compensation.”).

The current condition of the tunnels on the Coos Bay Subdivision is irrelevant to the Line’s NLV. The premise of net liquidation value is that the line will *not* be used to provide rail service. Whether the tunnels can accommodate rail traffic has nothing to do with the “highest and best nonrail use” of the rail properties. *San Joaquin Valley R.R. Co.—Abandonment Exemption—in Tulare Cty., CA*, AB-398 (Sub-No. 7X), slip op. at 3 (Aug. 25, 2008); *see Kansas City So. Ry. Co.—Abandonment Exemption—Line in Warren Cty, MS*, STB Docket No. AB-103 (Sub-No. 21X) (May 20, 2008), slip op. at 4 (when calculating NLV the “Board value[s] the Line as if it were to be dismantled and taken out of service”).

Moreover, there is nothing at all surprising about a feeder line applicant needing to rehabilitate a line after purchase. Most feeder line applications and OFAs involve lines that

require rehabilitation work, and the Board has never suggested that the incumbent carrier can be forced to perform rehabilitation work prior to a forced sale. *See, e.g., Pyco Industries, Inc.—Feeder Line Acquisition—Lines of South Plains Switching, Ltd.*, STB Fin. Docket No. 34890 (Aug. 31, 2007) (not deducting rehabilitation costs from net liquidation value and finding that feeder line applicant could pay for rehabilitation costs); *Glenwood & So. R.R. Co —Feeder Line Acquisition—Arkansas & Midland R.R. Co Line Between Gurdon & Birds Mill, AR*, I.C.C. Fin. Docket No. 32613 (Nov. 23, 1994) (rejecting feeder application in part because applicant failed to indicate how it would finance rehabilitation); *cf.* 49 C.F.R. § 1152.22(b) (contemplating that there may be “deferred maintenance and rehabilitation costs” for lines proposed for abandonment). To the contrary, it is well settled that a feeder line applicant assumes responsibility for any rehabilitation necessary to operate the line. *See, e.g., Pyco Industries, Inc.*, STB Fin. Docket No. 34890 (Aug. 31, 2007); *Glenwood*, I.C.C. Fin. Docket No. 32613 (Nov. 23, 1994). Indeed, the Board’s regulations expressly require a party making an offer of financial assistance to account for the cost of “rehabilitating the line to Federal Railroad Administration Class 1 Safety Standards.” 49 C.F.R. § 1152.27(a)(3). In short, the Board has always recognized that purchasers of rail lines take those rail lines “as is” and must accept responsibility for any necessary rehabilitation costs.

The Port does not cite any authority to support its extraordinary request that CORP be required to repair the tunnels without compensation before selling the line to the Port. Indeed, the Port’s heavy reliance on the recent Kansas City Southern Railway Company (“KCS”) *Warren County* case highlights the lack of legal support for its request. In *Warren County*, a rail bridge was partially dismantled by local government officials *after* KCS had filed for an abandonment exemption and parties had made an offer of financial assistance. *See Kansas City*

So. Ry. Co.—Abandonment Exemption—Line in Warren Cty, MS, STB Docket No. AB-103 (Sub-No. 21X) (May 20, 2008). In that case, the Board held that “diminishing the rail assets during the pendency of the OFA process undermines that process because it could obstruct or impede the efforts of the offeror to provide rail service.” *Id.* at 4 (emphasis added). As a result, the Board found that “the abandoning railroad [is] responsible for ensuring that a rail line that is the subject of an OFA remains in substantially the same condition it was in when the railroad filed for abandonment authority.” *Id.* at 5 (emphasis added). The Board’s decision in *Warren County* was predicated on the fact that the rail assets were diminished after parties had offered to purchase the railroad. The rule of *Warren County* is simply that while an OFA is pending a railroad must keep the line in “substantially the same condition it was in *when the railroad filed for abandonment authority.*” *Id.* at 5 (emphasis added). Neither *Warren County* nor any other Board decision supports the notion that a purchaser can demand that a railroad *improve* the line as a condition of a forced sale. To order a carrier to undertake such a forced improvement for the benefit of a feeder line applicant without compensation would unquestionably be an unconstitutional taking.

The Board should reject the suggestion that the Board’s decision should be influenced by the fact that CORP is controlled by RailAmerica, and that RailAmerica is now owned by certain investment funds managed by Fortress Investment Group LLC (“Fortress”). The Board has squarely held that “the financial position of a railroad’s corporate parent or affiliates” is not relevant to whether or not a carrier is entitled to the full NLV of its real property. *Decatur County Comm’rs v. The Central Railroad Co. of Indiana*, at 17 n 31 (served Sept. 29, 2000) (“*CIND*”), *aff’d sub nom. Decatur County Comm’rs v. STB*, 308 F.3d 710 (7th Cir. 2002). The fact that CORP is ultimately controlled by an entity with greater financial resources than CORP

itself is beside the point. The Board cannot require Fortress or RailAmerica to pay for repairs to tunnels on the Coos Bay Subdivision any more than it could order prominent BNSF investor Warren Buffett to assume the cost of repairing a damaged bridge on BNSF's lines. (Indeed, if the damaged bridge were located on a line on which BNSF was experiencing substantial operating losses and had no prospect of returning to profitability, prior Board precedent would not support an order requiring BNSF itself—much less its shareholders—to make such repairs)

The Board cannot treat CORP differently for being owned by a larger entity any more than it could treat publicly traded carriers like BNSF differently for being owned in part by wealthy shareholders. Under the Board's regulations CORP must maintain "financial and operational independence" from its corporate parents and affiliates, who are forbidden from subsidizing rehabilitation costs. *See, e.g., STB Finance Docket No. 34177, Iowa, Chicago & Eastern R.R. Corp. – Acquisition and Operation Exemption – Lines of I&M Rail Link*, at 4 (served Jan. 21, 2003).¹⁹ Requiring CORP's corporate parents or affiliates to assume the cost of repairing CORP's rail facilities would subvert the basic rule that CORP must stand on its own.

Granting the Port's extraordinary request would create a strong disincentive for potential short line investors to take on the responsibility of operating marginal lines. The Coos Bay Subdivision was a cast-off of a Class I carrier (SPT) – it was a branch line with preexisting

¹⁹ CORP acquired the rail lines at issue as a new carrier under 49 U.S.C. § 10901 and the class exemption set forth at 49 C.F.R. § 1150.31. *See Central Oregon & Pacific R.R., Inc.—Lease, Operation, and Acquisition Exemption—Southern Pacific Transp. Co.*, ICC Finance Docket No. 32567 (served Jan. 19, 1995). The ICC and STB have required new carriers invoking the class exemption to maintain "financial and operational independence" from their corporate parents and affiliates. *See, e.g., Iowa, Chicago & Eastern R.R. Corp. – Acquisition and Operation Exemption – Lines of I&M Rail Link*, STB Finance Docket No. 34177, at 4 (served Jan. 21, 2003). While a carrier's parent or affiliate may provide start-up financing or loan guarantees, *id.* at 5 and n.7, the Board has stated that an acquiring carrier using the class exemption must "assume full responsibility for its operating decisions, profits, debts, and risk of loss," and that a corporate parent "could not subsidize the new subsidiary or accept the financial risk for the ongoing enterprise," nor could it extend its role "beyond being a mere investor." *Id.* at 6.

maintenance issues and a small operating margin that would have been abandoned years ago had it not been for CORP's willingness to give the line a "second chance". Much of the rural territory in this country likewise served by short line carriers who operate branch lines that often have deferred maintenance or rehabilitation costs and limited operating income from which to fund capital improvements. The Port's position that railroads can be forced to rehabilitate these lines - - regardless of whether the cost of rehabilitation are justified by the traffic and revenues on the line - - would significantly increase the financial risk for anyone considering an investment in a marginal rail line. The Port's demand that it be allowed to deduct the rehabilitation costs of the line from its purchase price would have the counterproductive effect of discouraging future investment in short lines.

B. CORP Did Not Cause The Deteriorated Tunnel Conditions That Necessitated The Embargo.

Even if there were some legal basis for the Port's demand that CORP pay for rehabilitation of the tunnels before a forced sale — and there is not— the record evidence clearly does not justify such an order. The Port's claim that the tunnel problems that required embargo of the Coos Bay Subdivision are attributable to "deferred maintenance" is plainly wrong. In fact, the need for tunnel rehabilitation on the line is the natural result of the fact that these timber-lined tunnels date from the nineteenth century. See V.S. Lundberg at 2-3. The Oregon DOT has recognized that similar "aging issues" are endemic to all railroad tunnels on Oregon short lines:

Rail tunnels also suffer from aging issues. There are 69 railroad tunnels in Oregon, of which 34 are on the short line system. Except for one, all of the short line tunnels were dug between 1883 and 1916. The original builders framed the tunnel interior with massive timber "ribs," significant sections of which still serve today. Over the years, the timber decays which affects the stability of the tunnels.

V.S. Lundberg, Att. 1 at 3

The tunnels on the Coos Bay Subdivision were already a century old when CORP acquired the line in 1994, and they had begun to deteriorate because of their age. *See* V S Lundberg at 2. As explained in the Verified Statement of Steven Patton, the tracks on the Coos Bay Subdivision were also in a declining state of repair at the time the Line was purchased by CORP, due to cutbacks in maintenance efforts by SPT for several years prior to the sale. *See* V.S. Patton Mr. Patton explains that during the 1970's and early 1980's, a time when the Coos Bay Subdivision handled a far greater volume of traffic than it does today, the line was well-maintained. SPT performed regular maintenance work on the tunnels along the Coos Bay Subdivision during that period. However, even with that level of maintenance the tunnels on the Coos Bay Subdivision, including Tunnel 15—one of the tunnels that caused CORP to embargo the line in 2007 – showed substantial signs of deterioration and required significant attention by SPT repair crews.

Over time, SPT did not sustain its prior level of maintenance on the Coos Bay Subdivision. During the last five years before it sold the Coos Bay Subdivision to CORP, SPT did not perform any significant rehabilitation of the aging tunnels on the line. *See* V.S. Patton at 2-3. As a result, when CORP acquired the Coos Bay Subdivision, the line already suffered from a substantial amount of deferred maintenance and little tunnel work had been performed in five years. Thus, any suggestion that CORP bought a rail line in pristine condition and allowed the tunnels to deteriorate to their present condition through simple neglect is simply not correct.

Witnesses at the August 21 hearing confirmed that the deteriorated condition of the tunnels on the line predated CORP's ownership. Edward Immel, a former ODOT rail planner, confirmed that the line was "very, very difficult" to maintain and that in 1994 the State was aware of the significant expenses required to maintain the line in adequate condition (August 21

Hearing Tr. Vol. II at 33 (Immel).²⁰ At that same hearing former SPT employee Mr. Nugent agreed that “the tunnel conditions that eventually prompted the discontinuance of service were readily apparent” at the time of CORP’s acquisition of the line. August 21 Hearing Tr Vol. II at 4 (Nugent). In short, there is no question that CORP inherited a line with deteriorated tunnels, and that the current condition of those tunnels is the result of long-term aging issues that are common to older, timber-lined tunnels, not intentional neglect by CORP.

The Port does not point to any concrete evidence to support its assertion that current tunnel conditions were caused by deficient maintenance. Indeed, the Port contradicts itself by submitting evidence that significant tunnel deterioration had occurred before SP sold the line to CORP. In 1994 Montana Rail Link commissioned a study of tunnel conditions on the Coos Bay Subdivision that identified the need for rehabilitation of five tunnels on the line, including Tunnel 15 and Tunnel 18. See Exh. 5 to Port Reply to Board’s Show Cause Order, STB Fin. Docket No. 35130 (filed June 3, 2008). This March 1, 1994 Shannon & Wilson Report identified the need for \$695,000 in immediate tunnel repairs on the Coos Bay Subdivision (nearly \$850,000 in 2008 dollars) and an additional \$8,170,000 in longer term tunnel maintenance on the CORP system.²¹ See *id*. In short, the evidence is clear that the tunnel conditions preexisted CORP’s acquisition of the line, and did not arise during the time CORP operated the line.

²⁰ References to testimony from the August 21 hearing are taken from a preliminary transcript of the hearing. As discussed by counsel for the parties and STB staff following the hearing, when a final transcript is available, CORP will provide the Board with page references to the final transcript.

²¹ It should be emphasized that this report was prepared for Montana Rail Link—not CORP. Mr. Lundberg was unaware of this report before the Port attached it to its filing in the Show Cause Proceeding, and there is no indication that CORP (or RailAmerica) were aware of its contents when CORP acquired the Coos Bay Subdivision. See V.S. Lundberg at 3.

C. CORP Did Not Defer Maintenance On The Line.

Moreover, the Port's claims that CORP intentionally deferred maintenance of the Coos Bay Subdivision in order to profit from a later abandonment of the line are utterly contradicted by the facts. *See* Bishop V.S. in Support of Supplement to Port's Application at 9. The truth is that CORP invested substantial sums in maintaining and improving the Coos Bay Subdivision – spending a far greater percentage of revenues generated by the Line than is customary in the industry – and that CORP *increased* spending on maintenance and capital expenditures even after the Line became unprofitable.

There is no question that the rugged terrain in which the Coos Bay Subdivision is located makes the Line extraordinarily expensive to maintain. The Port admits as much, stating that “the Line’s characteristics make it more expensive to maintain than many short lines.” Application at 48. In addition, the Oregon Department of Transportation (“ODOT”) recently observed that the Coos Bay Subdivision is particularly “costly to maintain.” Oregon Short Line Railroads Assessment at 4 (Feb. 18, 2008) (Lundberg V.S. Attachment 1) (“With nine tunnels and 63 bridges longer than 100 feet, this curvaceous line through coastal mountains known for abundant rainfall is costly to maintain and will require capital investment for aging tunnels and bridges in the near-term.”). These assessments were echoed at the August 21 public hearing, where former Oregon state rail planner Edward Immel testified that the line was “very, very difficult to operate.” August 21 Hearing Tr. Vol. II at 33 (Immel).

Contrary to the Port's baseless allegations, CORP has invested heavily in both maintenance and capital expenses on the Coos Bay Subdivision. Table 1 sets forth CORP's spending on maintenance and capital investments on the Coos Bay Subdivision between 2002 and 2007. *See* V.S. Lundberg at 4-5.

Table 1²²
Coos Bay Subdivision Revenues, Operating Income, Maintenance Expenses, and Capital Spending

	2002	2003	2004	2005	2006	2007
Total Annual Revenue	\$3,068	\$3,522	\$2,418	\$3,050	\$3,360	\$2,674
Operating Income	\$235	\$552	(\$578)	(\$939)	(\$1,172)	(\$792)
Track, Bridge & Crossing Maintenance	\$560	\$740	\$662	\$738	\$934	\$721
Capital Spending	\$269	\$431	\$257	\$1,280	\$1,775	\$567
Maintenance Spending as Percentage of Revenue	18.2%	21.0%	27.4%	24.2%	27.8%	27.0%
Capital Spending as Percentage of Revenue	8.8%	12.2%	10.6%	42.0%	52.8%	21.2%
Maintenance and Capital Spending as Percentage of Revenue	27.0%	33.2%	38.0%	66.2%	80.6%	48.2%

As Table 1 shows, between 2002 and 2007, CORP spent an average of 24 percent of its annual gross freight revenues earned on traffic moving over the Coos Bay Subdivision for ordinary track, bridge and crossing maintenance on the Line. *See* V.S. Lundberg at 4. By comparison, the average cost of ordinary maintenance on the lines operated by RailAmerica's 41 short line rail carriers is approximately 13 percent of gross freight revenues. *See id.* Indeed, CORP's maintenance spending as a percentage of revenues is nearly double the prevailing rate of maintenance in the railroad industry—in 2006, the aggregate expenditure by Class I rail carriers for all "Way and Structures" expenses (which include more than track, bridge and crossing maintenance) represented only 13.1% of their aggregate gross operating revenues for 2006.²³

When extraordinary capital expenditures are considered, CORP's commitment to maintaining the Coos Bay Subdivision is even more clear. As Table 1 indicates, between 2002

²² All amounts in Table 1 are expressed in thousands

²³ *See Class I Railroad Annual Report (R-1)*, Sched. 210, Line 13 (Total Railway Operating Revenue) and Sched. 410, Line 151 (Total Way and Structures) as filed with the STB by each Class I railroad for 2005 and 2006 (at http://www.stb.dot.gov/stb/industry/econ_reports.html).

and 2007, CORP invested an additional 25% of the annual gross freight revenues earned on traffic moving over the Coos Bay Subdivision for extraordinary capital projects on the Line. *See* V.S. Lundberg at 5. In 2005 and 2006 – years in which CORP lost approximately \$1 million annually from operations on the line (*see* Table 1) – CORP made \$1.28 million and \$1.78 million, respectively, in capital expenditures on the Coos Bay Subdivision. *See id* Between 2002 and 2007, CORP's combined ordinary maintenance and capital investment spending on the Coos Bay Subdivision consumed 49.4% -- nearly half -- of gross revenues from the line. *See id.* These data are hardly indicative of a railroad seeking to “milk” an asset through intentional neglect. Moreover, notwithstanding the substantial losses that CORP experienced from operations on the Coos Bay Subdivision, CORP's combined ordinary maintenance and capital investment spending on the line rose to 66.2% of gross revenues from the line in 2005 and 80.6% of gross revenues from the line in 2006. *See id.* These facts prove that the Port's claim that CORP purchased a strategy of “milking” the Coos Bay Subdivision by deferring maintenance is absolutely false. Even the Port's Executive Director grudgingly admitted at the August 21 hearing that parts of the Line have been “well-maintained.” August 21 Hearing Tr. Vol. I at 141 (Bishop). In short, CORP's substantial investments in the Coos Bay Subdivision in spite of its operating losses disprove the Port's allegations that CORP willfully neglected the Line. Finally the Port's claim that Fortress's acquisition of CORP's parent RailAmerica coincided with a decrease in CORP maintenance of the Line is specious. *See* Bishop V.S. in Support of Supplement to Port's Application at 9. As Table 1 above demonstrates, during 2007 CORP spent \$1,308,000 on maintenance and capital expenditures on the Coos Bay Subdivision. *See* V.S. Lundberg at 8. The vast majority of those expenses were incurred after Fortress's acquisition of RailAmerica was completed on February 14, 2007. *See id* Indeed, one of the

largest maintenance expenditures in the history of CORP's ownership of the Coos Bay Subdivision—the \$1.7 million repair of Tunnel No. 15 between November 2006 and January 2007—was incurred after Fortress and RailAmerica announced the acquisition on November 15, 2006. *See id.* These facts demonstrate that the Port's outrageous claim that "CORP stopped making repairs" to the Coos Bay Subdivision "once Fortress Investments announced that it was acquiring RailAmerica" is a blatant falsehood. *See Bishop V.S. in Support of Supplement to Port's Application at 9.*

D. CORP's Maintenance Of Tunnels On The Line Was Reasonable.

The Port's suggestion that CORP failed to take any action to maintain the tunnels since 1994 is likewise untrue. Since it acquired the line CORP, like SPT before it, has performed ordinary maintenance on tunnels on the Coos Bay Subdivision to the extent necessary to permit continued rail service. *See Lundberg V.S. at 6.* To be sure, CORP has not undertaken a major capital program to rebuild the tunnels on the Coos Bay Subdivision (although, as discussed below, it did make major improvements to Tunnel 21 in 1998 and Tunnel 15 in 2006). *See id.* Such a major capital program could never have been economically justified by the level of traffic and revenues on the line, even in the years prior to 2004 when operations on the Line generated modest profits. *See id.* Indeed, it is likely that SPT chose to dispose of the Line based upon its assessment that it could not earn a return on the capital required to address the long-term needs of the tunnels on the Line. *See id.*

Prior to the embargo, CORP did on several occasions undertake significant tunnel rehabilitation work when it became necessary to do so in order to permit continued operation of the Coos Bay Subdivision. For example, following a 1998 fire that damaged Tunnel 21, CORP performed major work to that tunnel and restored operations. More recently, after an October 2006 inspection by FRA and ODOT revealed significant deterioration in Tunnel No. 15, CORP

hired a contractor to perform repairs to the tunnel. During those repairs, Tunnel No. 15 collapsed, increasing the cost of repairs (initially estimated to cost \$350,000 - \$400,000) to approximately \$1.7 million. These substantial investments in the tunnels on the Line belie the Port's assertion that CORP neglected the tunnels for many years.

CORP's decision to embargo the Coos Bay Subdivision in September 2007 was motivated by concerns about the safety of several tunnels on the Line – not, as the Port claims, by a desire to “take advantage” of shippers or the State. The conditions that led to the embargo are well-documented in the report prepared for CORP by Shannon & Wilson in July 2007, and were confirmed by FRA in an inspection conducted shortly after the embargo went into effect. V.S. Lundberg at 9. After embargoing the line for safety reasons, CORP made an economic assessment of the cost of undertaking the necessary repairs in light of existing traffic and future prospects for the line. With no realistic prospect of reversing the mounting losses on the Line (which had grown to more than \$1 million annually), CORP could not justify an investment of \$2.9 million to repair the tunnels. Contrary to the Port's allegations, neither “the common carrier obligation” nor prior Board precedent mandated that CORP make such an investment, upon which it would never earn a return. CORP's decision to abandon the Line (following an unsuccessful attempt to enlist financial support from the State, UP and shippers) was a lawful and economically justified business decision.

Finally, there is no basis for allegations that CORP never advised the State of the deteriorating condition of the tunnels, and did not seek financial assistance for tunnel repairs prior to the embargo. *See, e.g.*, Letter of Hon. Peter DeFazio et al. at 1 (filed Aug 18, 2008). In fact, CORP did ask ODOT to help it address the long-term need for tunnel repairs. In 2006 CORP applied to ODOT for a ConnectOregon grant to, *inter alia*, “[r]epair tunnel lining in

tunnels 13, 15, and 20 on the Coos Bay Subdivision." Lundberg V.S. Attachment 3 at 8 (ConnectOregon Application). That application was not granted.²⁴

* * *

In conclusion, there is no legal or factual justification for allowing the Port to purchase the Coos Bay Subdivision for anything less than its constitutional minimum value. If the Port wishes to purchase the rail line to provide rail service, it must take responsibility for the rehabilitation necessary to restore rail service.

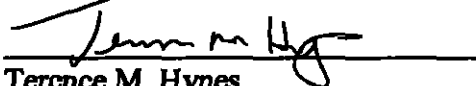
²⁴ The suggestion by the Port and its allies that CORP should be ordered to improve the Coos Bay Subdivision to FRA Class 2 standards is unwarranted and based on an incorrect factual premise. *See id.* Letter of Hon. Peter DeFazio et al at 1 (filed Aug 18, 2008) ("encourag[ing] the Board to order that CORP be required to bring the line back up to FRA Class 2 operation standards"). In the first place, Coos Bay Subdivision track was not at FRA Class 2 standards when CORP purchased it from SPT. *See* V.S. Patton at 2-3. Rather, the line was a mix of FRA Class 1 and Class 2 track at that time. As former SPT employee and current CORP Track Inspector Steve Patton testifies, the condition of the Coos Bay Subdivision's track at the time of the embargo was no worse than it was when SPT sold the line to CORP. *See* Patton V.S. at 2-3. Moreover, given the volume and nature of the traffic on the Coos Bay Subdivision, there is simply no need for it to be maintained to FRA Class 2 standards. *See* Lundberg V.S. at 8. If the Port purchases the Coos Bay Subdivision, a well maintained Class 1 physical plant is more than adequate to provide service over this branch line.

CONCLUSION

For the reasons set forth in this Response, CORP respectfully requests that the Board find that the constitutional minimum value of the Coos Bay Subdivision is \$26,811,209. If the Board determines that the Port's Feeder Line Application otherwise satisfies the standards set forth at 49 U.S.C. § 10907, it should require the Port to pay CORP the full constitutional value for the Line.

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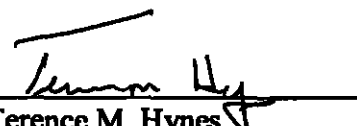
Dated: August 29, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Confidential Version of the Response of Central Oregon & Pacific Railroad, Inc. to Feeder Line Application to be served by hand-delivery this 29th day of August 2008 on

Sandra Brown
Troutman Sanders
401 Ninth St., NW
Washington, DC 20004-2134

and the public version to be served by first-class mail, postage prepaid, to all parties of record.

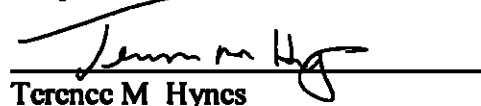

Terence M Hynes

CONCLUSION

For the reasons set forth in this Response, CORP respectfully requests that the Board find that the constitutional minimum value of the Coos Bay Subdivision is \$26,811,209. If the Board determines that the Port's Feeder Line Application otherwise satisfies the standards set forth at 49 U.S.C. § 10907, it should require the Port to pay CORP the full constitutional value for the Line.

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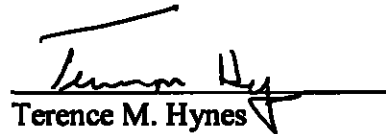
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Terence M. Hynes

LUNDBERG

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Oregon International Port of Coos Bay – Feeder Line)	
Application - Coos Bay Rail of the Central Oregon &)	Docket No. 35160
Pacific Railroad, Inc)	
)	

VERIFIED STATEMENT OF PAUL LUNDBERG

My name is Paul Lundberg. I am Senior Vice President - Strategic Relations of RailAmerica, Inc. I also serve as Vice President of Central Oregon & Pacific Railroad, Inc ("CORP"). My business address is 7411 Fullerton Street, Jacksonville, FL 32256. My background and qualifications are described in detail in the Verified Statement that I submitted on July 14, 2008 in connection with CORP's Abandonment Application in Docket No AB-515 (Sub-No 2)

The purpose of this Verified Statement is to respond to assertions by the Oregon International Port of Coos Bay (the "Port") that CORP "knowingly neglected" its line of railroad between milepost 763.130 near Cordes, OR and milepost 652.114 near Danbo, OR (the "Coos Bay Subdivision"), engaged in a "repeated and willful deferral of tunnel maintenance" on the line, and pursued a "milk-the asset strategy with respect to the Coos Bay Line (and, specifically, the tunnels)." Port Application at 48-49 As this Verified Statement (and the testimony of witness Patton) will show, such allegations are simply not true.

In the first place, the current condition of tunnels on the Coos Bay Subdivision is the result of natural deterioration of timber-lined tunnels that are more than a century old — not CORP's failure to perform ordinary maintenance during the time it has owned the line Second, CORP has not "deferred" track maintenance on the line — to the contrary, CORP has invested in both ordinary maintenance and capital work on the Coos Bay Subdivision at levels far exceeding

those typically undertaken by other Class I or shortline carriers. Finally, the Port's suggestion that CORP's decision to embargo the line and to seek abandonment authority are part of a "strategy" to "milk" the Coos Bay Subdivision is nonsense. See Port Application at 49, Bishop V.S. in Support of Supplement to Port's Application at 9-10. As the Board is well aware, CORP was forced to embargo the line because of serious safety concerns — concerns that were reaffirmed by the Federal Railroad Administration ("FRA"). Even after the embargo was imposed, CORP sought to avoid an abandonment by soliciting interested stakeholders to participate with CORP in a cooperative effort to repair the tunnels, rehabilitate the line and assure continued rail service for the long term. When that effort failed, CORP had no viable economic alternative but to seek authority to abandon the line.

I. TUNNELS ON THE LINE HAVE DETERIORATED BECAUSE OF AGE—NOT CORP'S NEGLIGENCE

The Port wrongly suggests that the current problems in Tunnels 15, 18 and 20 are attributable solely to alleged "deferred maintenance" by CORP. In fact, the need to rehabilitate the tunnels on the Coos Bay Subdivision is the natural consequence of the fact that these timber-lined tunnels date from the nineteenth century. In a recent report, Oregon DOT acknowledged that such "aging issues" are endemic to all railroad tunnels on Oregon short lines

Rail tunnels also suffer from aging issues. There are 69 railroad tunnels in Oregon, of which 34 are on the short line system. Except for one, all of the short line tunnels were dug between 1883 and 1916. The original builders framed the tunnel interior with massive timber "ribs," significant sections of which still serve today. Over the years, the timber decays which affects the stability of the tunnels.

(See Attachment 1 at 3.)

The tunnels on the Coos Bay Subdivision were already a century old when CORP acquired its rail lines from Southern Pacific Transportation Company ("SP") in late 1994

Contemporaneous evidence shows that the tunnels exhibited significant signs of deterioration at that time because of their age. Indeed, the Port's attempt to blame CORP for the condition of the tunnels is contradicted by the Port's own evidence, which indicates that significant tunnel deterioration had occurred before SP sold the line to CORP. Specifically, in its reply evidence in the *Show Cause Proceeding*, the Port submitted an analysis of the tunnels on the Coos Bay Subdivision prepared by Shannon & Wilson in 1994. (RailAmerica was not aware of the existence of that report before the Port's filing – that report was not commissioned by CORP, but rather was prepared at the request of Montana Rail Link, which apparently considered making a competing offer to buy the line from SPT.) The 1994 Shannon & Wilson report found "important instability requiring immediate repair" in both Tunnel 15 and Tunnel 18 (two of the tunnels that gave rise to the embargo last September). *See* Port Reply in *Show Cause Proceeding*, Exhibit 5 at 2. Overall, Shannon & Wilson identified approximately \$8 million in rehabilitation work required in the tunnels that were conveyed by SPT to CORP (including tunnels on both the Coos Bay Subdivision and the Siskiyou Subdivision). *Id.* at 3. This contemporaneous evidence shows that many of the tunnel problems that currently exist on CORP's rail lines predate CORP's ownership of the property.

II. CORP DID NOT DEFER MAINTENANCE ON THE LINE.

The Port's claim that CORP has pursued a "milk the asset" strategy by intentionally deferring maintenance of the Coos Bay Subdivision is demonstrably false. *See* Bishop V.S. in Support of Supplement to Port's Application at 9. The truth of the matter is that CORP has invested at a far greater rate than is customary in the rail industry to maintain the Coos Bay Subdivision. Indeed, CORP increased spending for both ordinary maintenance and capital work on the Coos Bay Subdivision even after the line became unprofitable. Table 1 sets forth CORP's

revenues, operating income, maintenance and capital investments on the Coos Bay Subdivision for the years 2002 – 2007 (up to the date of the embargo).

TABLE 1¹**Coos Bay Line Revenues, Operating Income, Maintenance Expenses, and Capital Spending**

	2002	2003	2004	2005	2006	2007
Total Annual Revenue	\$3,068	\$3,522	\$2,418	\$3,050	\$3,360	\$2,674
Operating Income	\$235	\$552	(\$578)	(\$939)	(\$1,172)	(\$792)
Track, Bridge & Crossing Maintenance	\$560	\$740	\$662	\$738	\$934	\$721
Capital Spending	\$269	\$431	\$257	\$1,280	\$1,775	\$567
Maintenance Spending as Percentage of Revenue	18.2%	21.0%	27.4%	24.2%	27.8%	27.0%
Capital Spending as Percentage of Revenue	8.8%	12.2%	10.6%	42.0%	52.8%	21.2%
Maintenance and Capital Spending as Percentage of Revenue	27.0%	33.2%	38.0%	66.2%	80.6%	48.2%

As Table 1 shows, between 2002 and 2007, CORP spent an average of 24 percent of the annual gross freight revenues earned on traffic moving over the Coos Bay Subdivision for ordinary track, bridge and crossing maintenance on the line. In 2006 (the last full year of operations), the cost of ordinary track, bridge and crossing maintenance on the Coos Bay Subdivision rose to \$934,000, or 27.8 percent of the \$3.360 million in gross freight revenues generated by traffic on the line in that year. By comparison, the average cost of ordinary maintenance on the lines operated by RailAmerica's 41 short line carriers is approximately 13 % of gross freight revenues. CORP's maintenance spending as a percentage of revenues is also much higher than the prevailing rate among Class I railroads—in 2006, the aggregate expenditure by Class I rail carriers for all "Ways and Structures" (which includes more than

¹ All amounts in Table 1 are expressed in thousands.

track, bridge and crossing maintenance) equaled only 13.1% of their aggregate gross operating revenues for 2006.²

When extraordinary capital expenditures are considered, CORP's commitment to maintaining the Coos Bay Subdivision is even more clear. As Table 1 indicates, between 2002 and 2007, CORP invested an additional 25% of the annual gross freight revenues earned on traffic moving over the Coos Bay Subdivision for extraordinary capital projects on the line. In 2005 and 2006 — years in which CORP lost approximately \$1 million annually from operations on the line (*see* Table 1) — CORP made \$1.28 million and \$1.78 million, respectively, in capital expenditures on the Coos Bay Subdivision. Between 2002 and 2007, CORP's combined ordinary maintenance and capital investment spending on the Coos Bay Subdivision consumed 49.4% — nearly half — of gross revenues from the line. Moreover, notwithstanding the substantial losses that CORP experienced from operations on the Coos Bay Subdivision, CORP's combined ordinary maintenance and capital investment spending on the line rose to 66.2% of gross revenues from the line in 2005 and 80.6% of gross revenues from the line in 2006. Such a level of investment is hardly indicative of a strategy to “milk” an asset by deferring maintenance.

Attachment 2 to my Verified Statement presents similar financial information for CORP's entire rail operations. As that Attachment shows, CORP has consistently invested substantially in both ordinary line maintenance and capital projects across its system. Indeed, notwithstanding a marked decline in overall profitability over the past four years, CORP has significantly increased both ordinary maintenance and extraordinary capital expenditures during

² *See Class I Railroad Annual Report (R-1)*, Sched. 210, Line 13 (Total Railway Operating Revenue) and Sched. 410, Line 151 (Total Way and Structures) as filed with the SIB by each Class I railroad for 2005 and 2006 (at http://www.stb.dot.gov/stb/industry/econ_reports.html)

that period. Again, the Port's claim that CORP has been "milking the assets" of the railroad is flatly contradicted by the facts

In short, the hard data regarding CORP's expenditures for ordinary maintenance and extraordinary capital work on the Coos Bay Subdivision belie the Port's irresponsible (and unsupported) rhetoric about CORP's supposed "neglect" of the line

III. CORP PERFORMED TUNNEL REPAIRS AS NECESSARY TO KEEP THE LINE OPERATIONAL

The Port's allegation that CORP has failed since 1994 to take any action to maintain the tunnels on the Coos Bay Subdivision is false. As witness Patton (who has been engaged in track inspections for both SPT and CORP on the Coos Bay Subdivision for nearly 30 years) testifies, CORP, like SPT before it, has performed ordinary maintenance on tunnels on the Coos Bay Subdivision as necessary from time to time to permit continued rail service. To be sure, CORP has not undertaken a major capital program to rebuild the tunnels on the Coos Bay Subdivision (although, as discussed below, it did make major capital improvements to Tunnel 21 in 1998 and Tunnel 15 in 2006). Such a major capital program could not have been economically justified by the level of traffic and revenues on the line, even in the years prior to 2004 when CORP's operations were profitable. Indeed, it is likely that SPT's decision to dispose of the Coos Bay Subdivision was motivated in large measure upon its assessment that it could not earn a return on the major capital program that would have been required to address the long-term needs of the tunnels on the line.

Prior to the embargo, CORP did perform significant tunnel work when such work was necessary to permit continued operation of the Coos Bay Subdivision. For example, in response to a 1998 fire that damaged Tunnel 21, CORP performed major capital work to repair the damage and restore the tunnel to service. More recently, after an October 2006 joint inspection

of the Coos Bay Subdivision by the FRA and ODOI revealed significant deterioration in Tunnel No. 15, CORP hired a contractor to perform repairs to the tunnel. During those repairs, Tunnel No. 15 collapsed, increasing the cost of repairs (initially estimated to be \$350,000 - \$400,000) to approximately \$1.7 million.

Statements suggesting that CORP "never communicated" with the State of Oregon regarding the condition of the tunnels on the Coos Bay Subdivision, or that CORP did not seek financial assistance to address the tunnel issue prior to the September 2007 embargo, are likewise incorrect. *See* Letter of Hon. Peter DeFazio et al. at 1 (filed Aug 18, 2008). In 2006, CORP applied to ODOT for a ConnectOregon grant to, *inter alia*, "[r]epair tunnel lining in tunnels 13, 15, and 20 on the Coos Bay Subdivision." *See* Attachment 3 ("ConnectOregon Application") at 8. However, CORP's application was not granted. (It should be noted that the Port plans on using ConnectOregon grant money to fund a significant portion of its proposed purchase and rehabilitation of the Coos Bay Subdivision.) CORP asked ODOI for help rehabilitating the line, but ODOT declined to provide it

The suggestion by the Port and its allies that CORP should be required to pay for the cost of rehabilitating the track on the Coos Bay Subdivision to FRA Class 2 standards is particularly unfounded. *See id* ("encourag[ing] the Board to order that CORP be required to bring the line back up to FRA Class 2 operation standards"). As witness Patton testifies, the Coos Bay Subdivision had ceased to be maintained by SPT to FRA Class 2 standards for a number of years before CORP purchased it. Rather, at the time of the sale, the line consisted of a combination of FRA Class 1 and Class 2 track. At the time of the embargo, the line likewise had been maintained by CORP to FRA Class 2 standards in certain locations and FRA Class 1 standards in other locations. Witness Patton testifies that the overall condition of the Coos Bay

Subdivision at the time of the embargo was no worse than it was in late 1994. Given the low volume of traffic on the line — an average of fewer than 20 cars per day — and the fact that the vast majority of that traffic consists of forest products whose shipment is not time-sensitive, there is simply no need for the entire Coos Bay Subdivision to be improved to FRA Class 2 standards. Indeed, a large proportion of the track operated by short-line railroads across the United States is FRA Class 1 track. If the Port acquires the Coos Bay Subdivision pursuant to its Feeder Line Application, a well-maintained FRA Class 1 physical plant will be more than adequate to meet the needs of the existing traffic base on the line.

Finally, the insinuation that Fortress's acquisition of CORP's parent, RailAmerica, coincided with a cessation of line maintenance on the Coos Bay Subdivision is meritless. Fortress announced its acquisition of RailAmerica on November 15, 2006, and the transaction was consummated on February 14, 2007. As Table 1 demonstrates, CORP spent \$1,308,000 on ordinary maintenance and capital expenditures on the Coos Bay Subdivision during 2007. Moreover, one of the largest capital expenditures in the history of CORP's ownership of the Coos Bay Subdivision —the \$1.7 million repair of Tunnel No. 15 between November 2006 and January 2007—was undertaken after Fortress agreed to acquire RailAmerica. As these facts demonstrate, any suggestion that ownership by Fortress led CORP to curtail its investment in the Coos Bay Subdivision is nonsense.

IV. CORP'S EMBARGO OF THE LINE AND EVENTUAL DECISION TO ABANDON THE LINE WERE NOT AN EFFORT TO "MILK THE ASSET."

The Port's vague allegation that CORP's embargo of the Coos Bay Subdivision and application to abandon that line represent an attempt to reap a profit by "taking advantage of a confluence of events" is untrue. *See* Bishop V.S. in Support of Supplement to Port's Application at 9. At the hearing on August 21, 2008, Port witness Bishop even went so far as to suggest that

the timing of the embargo and abandonment were designed to take advantage of rising scrap metal prices. (Witness Bishop does not explain how CORP could have predicted the run-up in metals prices during 2008 when it embargoed the line in September 2007.) Contrary to these unsupported allegations, CORP's decision to embargo the Coos Bay Subdivision was made necessary by well-documented safety issues with the tunnels. In particular, CORP was advised by Shannon & Wilson in September 2007 that repairs to Tunnels 13, 15, and 18 were "necessary to continue relatively safe train passage." See CORP's Show Cause Reply, Exhibit 6, September 21, 2007 Supplement at 2. Immediately after the embargo, the FRA inspected the subject tunnels and confirmed that continued operation in those tunnels was "hazardous to train traffic and maintenance operations." *Id.* Ex. 7. Thus, the timing of the embargo was based upon the physical condition of the tunnels (as reported by Shannon & Wilson and FRA), not by a desire to "take advantage" of conditions in the metals market.

After embargoing the line for those safety reasons, CORP made an economic assessment of the cost of undertaking the necessary repairs in light of existing traffic and future prospects for the line. Facing operating losses that had reached more than \$1 million annually, and with no realistic prospect for offsetting those losses by raising rates or attracting new business to the line, CORP simply could not justify an immediate investment of \$2.9 million to repair the tunnels on the Coos Bay Subdivision. Moreover, our experience in November 2006, when the cost of repairing Tunnel No. 15 grew from an estimated \$350,000 - \$400,000 to \$1.7 million, gave us pause about embarking on a major tunnel capital program that was highly unlikely to generate a positive return. We concluded that, absent public participation in the cost of repairing the tunnels and mitigating the mounting losses from operations, rail service on the Coos Bay

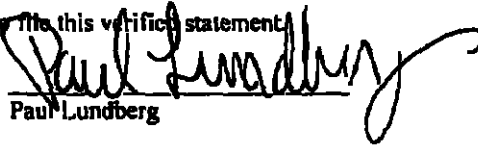
Subdivision could not continue. When our efforts to forge a public/private partnership to provide such assistance failed, we reluctantly moved forward with our abandonment application.

In short, CORP was not “taking advantage” of anything — the embargo was a necessary safety decision, and the decision to abandon the line (following an unsuccessful attempt to enlist financial support from the State, UP and shippers) was a rational and well-justified business decision

VERIFICATION

I, Paul Lundberg, declare under penalty of perjury that the foregoing is true and correct.

Further I certify that I am qualified and authorized to file this verified statement.


Paul Lundberg

Executed on 27 August, 2008



DATE: February 18, 2008

TO: ~~House Transportation Committee~~

FROM: Kelly Taylor
Rail Division Administrator

SUBJECT: Oregon Short Line Railroads Assessment

Introduction

This high level assessment of the Oregon short line railroads' business viability and service issues considered data including: the number of miles within each railroad's system, annual revenue, carload business volumes, the condition of the line and its components (track, bridges and tunnels) and whether the line can handle the industry standard rail cars. The attached table reflects this data for each Oregon short line railroad and a short description of the overall condition or specific issues related to the railroad's infrastructure, business or funding.

General Information

Since the 1980 Staggers Act (rail industry deregulation), the Class I railroads have abandoned, sold or leased hundreds of miles of "redundant" or marginally profitable routes to reduce overhead costs in response to changes within the industry that led to the gradual merger of most of the Class I railroads. Typically, these routes with low business density and in poor condition became today's short line railroads.

Oregon is served by two Class I railroads: the Union Pacific Railroad and the BNSF Railway Company, and 20 short line and regional railroads. Of the 2,388 miles of rail track in Oregon, short line and regional railroads operate 54 percent and the Class I railroads operate 46 percent.

Nearly half the lumber, wood and paper products shipped out of Oregon are by rail. Agriculture is also a heavy user of rail service. Moving cargo by rail is three times more fuel efficient than by truck and it reduces road congestion and wear. A railcar's capacity equals three to four trucks.

Access to rail service gives shippers a wider choice of transportation options. About 60 percent of Oregon's shippers are located on short line and regional railroad lines. These railroads handle about 194,000 rail carloads each year. They move the goods primarily intrastate, connecting to the UP and BNSF main lines in order to reach other states.

Business Viability

Since short line railroads acquired lines that were most likely in poor condition, it is imperative for the railroads to attract and sustain a certain level of business to provide the revenue needed to repair and maintain the rail infrastructure. Without adequate

revenue, it is just a matter of time before the railroad cannot provide service to its customers.

According to the 1993 I.C.C. pamphlet *"Before You Start a Small Railroad"*, annual carloads per mile can be predictors of viability:

- Below 25, viability of a line is unlikely except under special circumstances such as shipper ownership, willingness of local government to subsidize the line, or a very short distance with optimal operating conditions.
- 25 to 50, the line may be successful if the railroad is not responsible for track maintenance and taxes, as for example if the track is owned by a government which assumes these responsibilities.
- 50 to 100, chance for success is good if other conditions for success are favorable.
- Over 100, success is almost assured assuming other conditions are normal.

Unfortunately, many of the short line railroads, or branch lines within a short line railroad's system, do not have a sustainable level of business to pay for both operations and maintenance. As a result, the short line railroads are depleting the residual value of their infrastructure assets.

Infrastructure Issues

Oregon's short line rail infrastructure needs critical improvements, specifically track, bridges and tunnels, to maintain operations and facilitate the projected growth in Oregon's economy.

Track - There are two main components, 1) track "classification", and 2) whether the track is heavy enough rail to support the rail industry standard car that weighs 286,000 lbs, i.e. 286k.

The FRA has established nine classes of track and safety standards that prescribe the maximum speed of operation for both freight and passenger trains. The higher classification number, the higher maximum speed allowed. Oregon's short line railroads are a mixture of excepted, Class 1 and 2 track classification:

Excepted	Freight speed is 10 mph; passenger and more than five HazMat cars operation at a time is prohibited.
Class 1	Freight speed is 10 mph; passenger speed is 15 mph
Class 2	Freight speed is 25 mph; passenger speed is 30 mph

Designating track as "excepted" is the prerogative of railroad and gives exemption from compliance with any FRA regulation except track gage (width between the rails). Many rail operators choose to maintain their track as Class 1 or declare it as "excepted", since upgrading track to Class 2 may allow operation at higher speed (25 mph), but comes with the responsibility of higher maintenance costs and more FRA regulations.

In the 1990's, the industry standard railcar increased from a GVW of 263,000 lbs. to 286,000 lbs, referred to as "286K". As rail cars increase in capacity and weight, the size of rail needed to safely carry heavier cars also must increase. The generally-accepted minimum rail section for handling 286K railcars is that weighing 110 lb. per yard, ~~however 133 lb. or heavier rail is preferable. Currently, about 80 percent of Oregon's~~ rail miles are 110 lb. or above. Of the remaining 20 percent, the majority varies from 62 lb. rail to 90 lb. rail.

The cost to upgrade rail track to accommodate 286K rail cars is estimated at \$250,000 to \$300,000 per mile. Upgrading the Oregon track that cannot handle 286K rail cars today will cost between \$125 million to \$150 million.

Bridges - Similar to Oregon's aging highway bridge issue, the rail bridges are aging and in need of repair or replacement. There are hundreds of rail bridges in Oregon. These second and third generation bridges were built in the 1940s and 1950s. The majority were built as timber trestles, not steel or concrete. The assessment data includes only bridges that are over 100 feet in length.

Tunnels - Rail tunnels also suffer from aging issues. There are 69 railroad tunnels in Oregon, of which 34 are on the short line rail system. Except for one, all of the short line tunnels were dug between 1883 and 1916. The original builders framed the tunnel interior with massive timber "ribs," significant sections of which still serve today. Over the years, the timber decays which affects the stability of the tunnels.

As noted in a recent United States Government Accountability Office (GAO) report, there are no FRA regulations for railroad tunnels and bridges. So, unlike highway bridges, we do not have a reliable inventory or data about the bridges and tunnels to identify which are at the highest risk or the strategy to mitigate the risk. Also, except between Portland and Eugene, there are no available "detour" routes for rerouting trains if a bridge or tunnel fails. Instead, those rail lines would simply be rendered out of service, i.e. the recent Coos Bay line embargo.

Rail Funding

The railroads invest in maintenance and preservation of their lines. However, railroading is one of the most capital intensive industries. Railroad capital expenditures equal about 18 percent of their revenues, significantly higher than other industries, e.g. three percent for food manufacturing, four percent for wood products and metals, five percent for paper.

Oregon's congressional delegation has secured nearly \$50 million towards various short line rail needs in Oregon, including \$8.3 million for the renewal of a wooden bridge in Albany, and \$11 million to repair the 1996 storm damage on the Port of Tillamook Bay railroad. Oregon legislators have also provided multiple millions of funds to short line rail infrastructure. Of the 2005 *ConnectOregon* funds, nearly \$29 million was awarded to projects that benefit the short line railroads.

HIGH LEVEL ASSESSMENT OF OREGON SHORT LINE RAILROADS

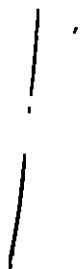
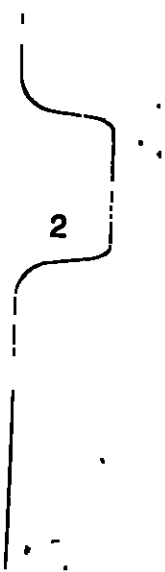
RAILROAD	MILES OWNED/LEASED	2006 GROSS REVENUE	2006 REVENUE PER MILE	CARLOADS PER MILE	TUNNELS >100 FEET	BRIDGES	FRA TRACK CLASS	MILES of RAIL <110-LB	HANDLING 200K RAILCARS	COMMENTS
Albany & Eastern	65.66	\$2,500,078	\$38,059	7,001	107	0	18	30.03	Yes	Annual carloads per mile are in sustainable range but there was limited capital reinvestment by first short line owner who downgraded entire operation to Excepted track status. Line has significant sections of light rail. Has received \$408,000 in state grants since 2000 and benefited from a project that received \$1.9 million ConnectOregon funds. Company acquired by Rick Franklin Corp. in 2007. Has applied for \$13.2 million from ConnectOregon II. \$7.8 million for the Mill City Branch, \$3.3 million for the Santiam Branch, and as co-applicant with the City of Lebanon for \$2.2 million for spur upgrade and bridge replacement on the Santiam Branch.
Mill City Branch (Albany-Mill City)	48.26					0	13	13.30	Yes	Traffic volumes on the Lebanon-Lyons-Mill City portion of this line are believed to be less than what is required for long-term sustainability. There are three customers, two of which (Fraser Plywood and Sherida Forest Products) are active. The third, Frank Lumber, has a spur at the end of the branch but is not using rail. Rail sections are adequate except for the first 7.5 miles out of Lebanon where 100-year-old 75-pound rail exists, and for a 0.5-mile stretch of isolated curving railroad high above the Santiam River with 80+-year-old 80-pound rail. Several thousand ties are needed, especially in the areas with the under rail. Although the line accepts 280K shipments there may be as many as five timber trackage with 3-4 finger clouds, running 265K over these structures is providing their luck. Two century-old 100-foot-long steel spans over Crabtree Creek are in poor condition and need to be replaced. New owner has authorized ConnectOregon II requests for both track and bridge work. Since 11/20/04 active shippers have voluntarily paid a \$100 per car surcharge to help fund the replacement.
Santiam Branch (Lebanon-Sweet Home)	17.43					0	3	16.73	Yes	Most of the carloads from this line segment are generated by Weyerhaeuser at Bauman, some six miles from Lebanon. While at one time there was significant manufacturing between Bauman and Foster (11 miles), there is little activity today. Absent new business potential abandonment may be proposed. For the line's entire 17.4 miles 80-pound rail existed in the 1930s when the line was built predominantly, the last two miles to Foster were laid in 1943 and 1947 as a line extension.
Central Oregon & Pacific	363.77	\$27,563,027	\$71,622	49,017	117	20	100	51.72	Yes	On a "yellow" basis CORP's carloads per mile appear to be sufficient for sustainability. The line is challenged with 3-4% grades, 20 tunnels and thousands of light bridges, which is outside of the "normal" rail carrier scenario used in the ICC viability predictor for operating and maintenance costs. Has received \$700,000 in state grants since 2001 for the Coos Bay line and was awarded \$7.7 million from ConnectOregon I to build a rail yard in Winchester. The Coos Bay line has also benefited from about \$20 million in federal and state funds, e.g. Coos Bay bridge repairs and North Spit rail spur. Although CORP did not apply for ConnectOregon II funds, the Port of Coos Bay has applied for \$6.5 million to purchase the Coos Bay line and repair some of tunnels. RailAmerica, the parent company of CORP, planned to borrow about \$40 million of federal funds to upgrade its system, but the plan was abandoned due to purchase of RailAmerica by Fortress Investments.
Saithyou Lens (Eugene-ORCA Border)	240.84			39,172	159	11	37	49.37	Yes	2006 traffic volumes appear sufficient to sustain operations and ordinary maintenance but the ability of the property to generate enough reinvestment capital needed to upgrade 49 miles less than 110-pound rail, plus do long-term tunnel and bridge renewal is questionable. If CORP implements its recent proposal to discontinue operations south of Badewier (Ashland), that will reduce by 23 miles trackage in Oregon requiring maintenance as well as 3 tunnels and 3 bridges longer than 100 feet. However, some carloads and revenue attributable to local traffic likely will be lost as well. From a long-term marketing standpoint, serving the southern connection to California is unwise.
Coos Bay Branch (Eugene-Coquille)	137.06		5,845	43	9	63	1 and 2	2.35	Yes	Effective 8/21/07, this line was embargoed west of Hood due to safety issues with Tunnels 13, 15 and 18. With nine tunnels and 63 bridges longer than 100 feet, this conversion through coastal mountains known for abundant rainfall is costly to maintain and will require heavy capital investment for long tunnels and bridges in the near-term. To reopen the line, CORP recently proposed \$25 million in collective capital investment from various sources for immediate repairs and an additional \$18 million in operational and maintenance subsidy from ODOT over the next five years. Current carload volumes are too low to provide the line of being a self-sufficient for profit entity at this point in time.
White City Branch (Toledo-White City)	5.87		2,459	419	0	0	2	0.00	Yes	This branch, which connects with the WCTU Railway at White City, is laid with heavy rail with a reasonably good tie condition and has plenty of business volume to sustain operation.

RAILROAD	MILES OWNED/LEASED	2006 GROSS REVENUE	REVENUE PER MILE	2006 CARLOADS	CARLOADS PER MILE	TUNNELS > 100 FEET	BRIDGES	FRA TRACK CLASS	MILES OF RAIL < 110-LB	HANDLING 260K RAILCARS	
City of Prineville	18.35	\$342,771	\$18,680	623	34	0	1	1 and 2	110	Yes	COP is making a comeback from its all-time low of 86 carsloads in 2004. Marketing strategies revolve around the Prineville Depot concept of a transloading center near Prineville. In the 1980s, received about \$2 million of federal funds for various improvements. Received \$2 million ConnectOregon grant for Phase 1 of multi-modal freight transload center. Has applied for \$3.5 million from ConnectOregon II to continue the development of the transload center.
Hampton Railway	5.20	\$0	\$0	0	0	0	0	Excepted	5.20	?	ILBC is a subsidiary of Hampton Lumber Co. In 2007 rail shipments returned from Fort-HB when the former shunt was leased to another entity. Service on the line is provided by Williams & Pacific RR. Has received \$320,000 in federal funds.
Idaho Northern & Pacific	20.30	\$1,721,599	\$84,805	4,106	206	0	3	1	0.80	No	While the track is generally good enough to meet FRA Class 2 specifications, INS-P operates at the lower 10 MPH speed of FRA Class 1 track to avoid derailments. The line has ample volume for sale.
Klamath Northern	11.00	\$764,146	\$69,468	2,414	216	0	1	Excepted	11.00	Yes	KNOR's entire line is laid with steel rail, yet it handles 260K cars as an accommodation to its owner and only shippers, Interior Pacific Inc. In 2006 KNOR received 4th among Oregon's 21 shortlines in carloads per mile. Has applied for \$720,000 from ConnectOregon II to upgrade track at Gilchrist to handle 260K rail cars.
Longview Portland & Northern	3.39	\$0	\$0	0	0	0	1	Excepted	?	N/A	Dormant
Modoc Northern OR & CA	161.60	\$569,802	\$3,466	588	6	0	4	Excepted, 1 and 2	64.46	Yes/No	For 2006, MNROR and West Walker Union for the worst carloads per mile average among Oregon shortlines. 2006 carload and revenue figures include Lake County Railroad, which was leased by MNROR effective April 1, 2007. The OR line segments are dependent upon the CA line segments and vice versa, so the 161.6-mile operation must be considered systemic. From a revenue perspective, MNROR has a serious survival problem that requires more volume. Between 1988 and 2002, Lake County Railroad received \$2.8 million in federal funds. Has applied for \$798,000 from ConnectOregon II \$150,000 for signal work in Klamath Falls and \$848,000 for Lakeview Branch improvements.
Lakeview-ORCA Border Lakeview Line in OR	14.85					0	?	Excepted	14.65	No	Attention all notes in OR are laid with 76-pound rail with marginal to condition. All shippers on the 85-mile Alturas-1 shortline line are limited in Lakeview. Bridge inventory is lacking.
ORCA Border-Alturas Lakeview Line in CA	39.80					0	?	Excepted	39.80	No	In L.A., 75-pound rail accounts for 8 track miles and there is approximately 1 mile (divided between 2 locations) of 80-pound rail. Balance of the line is 90-pound, which would be marginally adequate for 260K provided it had a good tie condition. However, ties in CA are in relatively poor condition and MNROR has unneeded rip rap to correct roadbed embankment erosion along the Frog River north of Alturas.
Alturas-CA/OR Border Modoc Line	68.63					0	2	2	0.00	Yes	At this point in history MNROR has the good future of leasing the Modoc Line with considerable residual life left in the track structure. At rail is used in 112-pound or heavier and tie condition supports FRA Class 2 spec. Limited traffic and a high desert climate are helping to prolong its life. In the 100 miles between Alturas and Klamath Falls there are only four bridges longer than 100 feet. The line of railroad originally was built circa 1929.
CA/OR Border-Tatum Modoc Line	18.62					0	2	2	0.00	Yes	Serve as branch line based above.
Mount Hood	21.13	\$1,832,337	\$86,717	410	19	0	1	1 and 2	20.83	Yes	MNROR's principal revenue comes from tourist excursions built in noteworthy that its freight traffic increased 63% in 2006 over 2005, and jumped 180% in 2005 versus 2004. The revenue data includes both passenger and freight business, but carload data is for freight only. In late 2006, the line was washed out between Dee and Paradise (about six miles) from a winter storm. Has submitted a ConnectOregon II application for \$700,000 to repair the line. Has received \$350,000 in state grants since 2001. Was been sold to Perimeter South Railways, a subsidiary of Iowa Pacific Holdings, effective 1/23/07.
Oregon Pacific	12.68	\$547,186	\$43,154			0	3	Excepted, 1	12.60	Yes	OPR has two separate and disconnected operations. The majority of track in poor condition. However, with \$43,154 average revenue per mile, it appears the line has enough business to be self-sufficient. The operator refuses to provide the required carload data for 2005 and 2006. In 2004, the average carload per mile was 139.
East Portland Traction Line	6.00					0	0	1	4.65	Yes	This line is a remnant of the former Portland Traction Co. and operates from East Portland to an industrial park in Milwaukie.
Metula Branch	7.88					0	3	Excepted	7.80	Yes	Former Southern Pacific Metula Branch, the line now ends just east of Liberal. Overall poor condition. New growth in the Curry area may cause a steel fabricator to be located on the line as a new customer.
Pajoute River & Coulee City (OR & WA)	36.80	\$750,005	\$23,924	26,805	720	0	4	Excepted	20.10	No/Yes	PCC has two separate and disconnected operations in OR and its branch to Westport, OR line involves trackage in WA. The high carloads per mile average is due to the termination of Union Pacific unit trains on the Astoria-Gilman line. Has received \$448,000 in state grants since 2001.

RAILROAD	MILES OWNED/LEASED	2008 GROSS REVENUE	2006 CARLOADS PER MILE	TUNNELS > 100 FEET	BRIDGES	PIA TRACK CLASS	MILES of RAIL < 110-LB	HANDLING 188K RAILCARS	
WIAOR State Line - Weston	20.10	764	30	0	4	Escorted	20.10	No	Branch consists of 75- and 80-pound rail and marginal tie condition. Volume and revenue sufficient for long-term survival. The operator recently elected to forego a Connect Oregon I grant due to concerns about language in the grant agreement relating to operating the line for a set period post project. 2006 traffic included 256 refrigerator cars loaded by Smith Frozen Foods at Weston and 488 carloads of grain as local traffic between Warde, WA and Spoford, OR. Also had more volume and/or revenue the line is a daily abandonment candidate in the next couple of years.
WIAOR State Line	5.20	Included	Above	0	0	Escorted	6.20	No	See above
WIAOR State Line	11.50	25,751	2,239	0	2	2	0.00	Yes	This line is a vestige of the old Arlington Condon Branch that now ends at Gilliam. Site of the Arlington landfill. PCC operates the line on lease from Union Pacific and semitrailer unit container trains of trash from Seattle. The traffic accounts for the impressive carload per mile average, the best of all OR short lines.
Peninsula Terminal Co	1.91	\$638,281	1,890	0	0	1	7	Yes	PT Co. is a switching carrier dating back to 1913, originally formed to serve Portland's stock yards. In 2001, received \$116,505 in state grants for rehabilitation work.
Portland Terminal	2.41	\$135,870	\$59,253	0	0	Escorted, 1	0.00	Yes	Owned by Union Pacific and BNSF Railway, operates Lela Yard in Portland.
Port of Tillamook Bay	63.80	\$2,200,722	\$28,262	48	33	Escorted, 1	8.00	No	Current carload volumes are too low to provide self-sustenance at this point in time. The line is challenged with 31% grades, 10 tunnels and multiple bridges, which is outside of the "normal" rail carrier scenario used in the ICC viability predictor for operating and maintenance costs. In addition to pending repairs from the recent storm, the curvaceous line through coastal mountains known for abundant rainfall is costly to maintain and will require heavy capital investment for aging tunnels and bridges in the near-term. Suffered \$12 million in storm damage in 1998. Embargoed 12/30/07 west of Buxton due to recent horrendous storm damage. The preliminary repair estimate of \$28 million minimum does not include environmental and bridge requirements. Alternative solution to providing transportation service to the businesses served by the line are being studied. Since 1990, has received more than \$6 million in state grants and loans, and nearly \$14 million in federal funds. Job applied for \$4 million from Connect Oregon II for repairs in several bridges and mile travel.
Portland & Western	285.78	\$16,460,288	\$94,694	197	94	Escorted, 1 and 2	95.44	Yes	As a whole, PNWR has sufficient carloads and revenue but some individual line segments are believed to be revenue deficient. Since 1998, has received \$2.7 in federal funds and \$6 million in state grants, as well as benefiting from a spur project that received \$320,000 in state funds. Has applied for 13.2 million from Connect Oregon II. 6.3 million for the Astoria line and \$6.9 million for the Albany rail corridor.
Newburg-Cook West Side (Newberg) Dist.	14.32			0	8	Escorted	9.23	Yes	80-pound rail on this line was laid in 1914 when it was electrified for interurban passenger operation. PNWR has discontinued through traffic over Rax Hill except for occasional movements. Local service is provided as needed between Cook (junction with Tillamook line) and Sherwood. Line needs a substantial tie program and upgrade of 90-pound rail. Carloads per mile likely less than 50 per year.
Hillsboro-Samson Stephens District	12.54			0	6	2	0.00	Yes	In 2001, received \$210,000 in state grants for rehabilitation work on this line. In 2007, upgraded from 100-year-old 75-pound rail to 115-pound continuous welded rail with a \$2.5 million Connect Oregon I grant. Principal customer is Samson Timber Co. CLs and revenue not known but annual carloads believed to be between 3,000 and 4,000.
Willaburg Jct.- MP 774 Tillamook District	32.84			0	8	2	4.70	Yes	This line is the connection between UP's Brooklyn yard in Portland and the Hillsboro-Samson area. It crosses the Willamette River between Lela Oregon and Milwaukie. Five and 40 miles were between Tigard and Beaverton were purchased in 2008 by Washington County to become part of the Washington County Commuter Rail operation. Carries considerable overhead traffic and is an important link in the west valley rail system. Has sufficient volume to insure adequate upkeep and operation.
FG Jct.-Forest Grove Forest Grove Dist.	5.83			0	1	Escorted	5.63	No	Very light (72 pound) rail and arctic carloadings. Absent industrial development waiting rail at either Corvallis or Forest Grove, line is in danger of abandonment. However, right of way is owned by state and the route would land itself well to a Forest Grove extension of Westside Max.
Gresham-Eugene Oregon Electric District	110.20			0	41	2	0.00	Yes	Back bone of PNWR's rail system in the Willamette Valley. Operates (north of Willamette) being upgraded for Washington County Commuter Rail. Line has adequate use and revenue to insure survival. Worst problems with track quality are between Salem and Albany where problematic old rail needs to be replaced. Of the state grants received, \$2.9 million of Connect Oregon I funds constructed a rail yard in Tigard. Has applied for \$8.9 million from Connect Oregon II for multiple improvements on the Albany rail corridor.
Albany, MP 0 O-MP 0.89 Samson Branch	0.89			0	0	1	0.60	Yes	Important connection between PNWR's Albany yard and its Milwaukie Yard.

RAILROAD	MILES OWNED/LEASED	2006 GROSS REVENUE	2006 CARLOADS PER MILE	CARLOADS PER MILE*	TUNNELS >100 FEET	BRIDGES >100 FEET	FRA TRACK CLASS	MILES of RAIL <110-LB. RAILCARS	HANDLING 285K RAILCARS	Notes
United Jct - Benita United Railways District	17.50				2	10	Examples, 1 and 2	10.99	Yes	Important fact between the low density rail system in the Williams Valley and the Astoria line in 2006, some 10,000 carloads of logs alone moved over this track plus hundreds of other cars. Between Bowers Jct and Benita this suffers from poor tie condition and 90-pound rail, resulting in 10 MPH operation. East of Bowers Jct, over Cornelius Pass is a long tunnel and several large bridges. Including the longest timber trestle in OR. These bridges will require much capital in the years ahead as they age.
MP 52-Tongue Point Astoria District	91.77				1	19	2	85.00	Yes	The expected start up of an expected plant at Port Westward (JAP 90) in 2008 will stabilize the line traffic and revenue-wise to Clatskanie. A plan to upgrade about 35 miles of 90-pound rail to heavier welded rail to accommodate the unit train trains headed to Port Westward is being implemented. West of Clatskanie is the Georgia Pacific Wagon paper mill, but for the remaining 28 miles towards Astoria there is no business. Any "unit train" type business developed west of Port Westward will require upgrading the 90-pound rail to heavier size for safe handling of 285K traffic. Absent any business beyond Wagon, continued presence of the railroad is in jeopardy. Underlying light of way belongs to the state. There are three hand-craned drawbridges on the line dating from circa 1888 that may need to be electrified to provide efficiencies for any significant additional business. Of the state grants received, \$413,500 was for the line. Has applied for \$4.3 million from ConnectOregon II towards the "35 miles of 90-pound rail" 1000000s needed for Port Westward.
Wallows Union	63.30	\$142,444	\$2,250	366	0	4	Excepted, 1		No	This railroad has serious revenue deprivation. The bulk of 2007 revenue will be from tourist operation. The RRR is living off the reduced value of its interlined assets but eventually capital monies will be needed for the renewal and, eventually, some rail replacement and bridge work. Since 2001, has received more than \$4.5 million in state grants and loans. In 2005, received \$3 million in federal assistance to reduce 1000000s needed for Port Westward.
WCTU Railway	12.20	\$846,717	\$44,013	2,469	0	0	Excepted		Yes	Revenue adequate for foreseeable future.
Williams & Pacific	164.02	\$17,647,917	\$65,339	40,806	1	70	Excepted, 1 and 2	86.16	Yes	Overall, WPRR's revenue per mile and carloads per mile are the best of the larger short lines. However, individual line segments have problems. Since 2000, has received \$2.65 million in state grants and \$9 million in federal funds.
Newberg-Corvallis West Side District	55.98				0	16	Excepted, 2	17.89	Yes	Revenue adequate as the connecting link between west valley communities such as Newberg, McMinnville, Wilsonville, Dallas, and Marist railroad at Albany. Portion from St. Joseph to Newberg includes 80 percent rail and in 1914. This section needs both tie and rail upgrades to heavier material.
Corvallis-Mount Hill-Oakdale Lead	22.87			630	0	0	Excepted	22.67	No	Embarked June 2007 due to really deteriorated condition. Future in doubt. Shipment and county are exploring ways to acquire and preserve the line. 75-pound rail could continue to be useful at slow speeds with a massive tie renewal but opening the line to 285K calls for replacing rail with heavier steel. Of the state grants received, \$300,000 was for this line.
Albany-Toledo Toledo District	74.40				1	49	2	0.00	Yes	Rail and tie condition good as Georgia-Pacific paper mill at Toledo ships significant tonnage over the line. Railroad crosses Marys River 19 times and Yacolt River 18 times as it meanders through Coast Range. Most steel bridges include second hand components and some of these are nearing the century mark. Bridge renewal on this route will require a lot of capital as structures reach the end of their life cycles.
Whiteoak-Williams Williams District	19.14				0	3	2	10.28	Yes	Upgraded from old 80-pound rail to 109-pound and 113-pound continuous welded rail with \$2.6 million of the state grants received. Line in good shape for secondary feeder route and has adequate revenue to sustain operation and maintenance for foreseeable future.
Geringer-Oakdale Dallas District	9.20				0	0	Excepted	5.12	Yes	Line condition has appeared downward as traffic declined. Only shippers left at Dallas is Weyerhaeuser. Aggressive tie program would improve ties significantly. Replacing 90-pound rail probably not economically justifiable unless significant new business were to locate on this branch.
Williams Valley	33.41	\$710,009	\$21,547	2,034	0	6	Excepted, 1	30.49	Yes	WVRR's owner advises he is having his "worst year ever" in 2007 due to decline in forest products traffic, principally Weyerhaeuser at Stayton. In 1998, received \$300,000 in federal funds. Since 2001, has received \$2.88 million in state grants for rehabilitation work and to upgrade some track to handle 285K rail cars. Has applied for \$1 million from ConnectOregon II to continue the improvements begun with ConnectOregon I.
Woodburn-Stayton Line	31.43				0	5	1 and 2	28.51	Yes/No	Line is benefiting from a \$2.3 million ConnectOregon I grant to improve overall condition for handling 285K full length of route.
Gee-53rd Ave. Salem Gear Line	1.98				0	1	Excepted	1.96	No	Not in service.
Wyoming Colorado	23.00	\$341,586	\$14,851	1,190	0	2	Excepted	23.00	No	Carloads per mile are borderline for survival and sufficient capital to replace lighter rail sections with heavier steel is not being generated. Unless this line can be upgraded to handle 285K cars eventually the retirement of 285K equipment will slowly erode WVCO's traffic base and the line will be lost.

* CARLOADS PER MILE NOTE: According to the 1993 I.C.C. pamphlet "Before You Start a Small Railroad", annual carloads per mile can be predictors of viability. (1) Below 25, local government to subsidize the line or a very short distance with optimal operating conditions. (2) 25 to 50, the line may be successful if the railroad is not responsible for track maintenance and taxes, as for example if the track is owned by a government which assumes these responsibilities. (3) 50 to 100, chance for success is good if other conditions for success are favorable. (4) Over 100, success is almost assured assuming other conditions are normal.



REDACTED

3



Central Oregon & Pacific Railroad, Inc.



ConnectOregon Application for

Track Improvements Project



Central Oregon & Pacific Railroad (CORP) *ConnectOregon* Application

CORP Track Improvements

Table of Contents

Application for *ConnectOregon* Program 2005-2006

Attachment A:	CORP Track Improvement Public Benefit Brief
Attachment B:	Economic & Social Benefit of Diverting Truck Traffic with CORP Yard Improvements
Attachment C:	CORP Track Project List Spreadsheet
Attachment D:	CORP Track Improvement Public Benefit Analysis Spreadsheets

Central Oregon & Pacific Railroad (CORP)

***Connect*Oregon Application**

Application For ConnectOregon Program 2005-2006

Submit by Email

To ensure you have current program information, e-mail connectoregon@odot.state.or.us to get on the electronic mailing list.

PART A- Project Summary and Certification:

Use this form or a replica Print and sign one original Attach additional text at the end as necessary identified with the corresponding question number

1. APPLICANT

ORGANIZATION NAME Central Oregon & Pacific Railroad, Inc	PRIMARY CONTACT PERSON AND TITLE Steve Hefley
ADDRESS 333 S E. Mosher	TELEPHONE (541) 957-2512
CITY, STATE AND ZIP CODE Roseburg, OR 97470	FAX (541) 957-0686

2. CO-APPLICANT

ORGANIZATION NAME	PRIMARY CONTACT PERSON AND TITLE
ADDRESS	TELEPHONE
CITY, STATE AND ZIP CODE	FAX

3. PROJECT NAME AND LOCATION

Central Oregon & Pacific Railroad main line track improvements, Siskiyou, Roseburg, & Coos Bay Subdivisions.

4. SUMMARY OF PROJECT

Upgrade of the Central Oregon & Pacific Railroad main lines This includes a request of grant money within Region 2 (in the amount of \$1,477,492) and Region 3 (in the amount of \$5,876,270) Detailed information regarding projects to be completed in each Region is contained in Attachment C which is made part of this Application Also see page 3

5. COST SUMMARY*

a) ConnectOregon Grant Amount	\$7,353,762.00
b) ConnectOregon Loan Amount	
c) Subtotal ConnectOregon Funds	\$7,353,762.00
d) Match Amount	\$5,025,812.00
e) Other Fund Amount	
f) Project Total	12,379,574

*Leave these Cost Summary entries blank - they will fill in automatically when Part C.4 of application is completed.

6. CERTIFICATION

I certify that Central Oregon & Pacific Railroad, Inc (applicant organization) supports the proposed project, has the legal authority to pledge matching funds, and has the legal authority to apply for ConnectOregon funds I further certify that matching funds are available or will be available for the proposed project. I understand that all State rules for contracting, auditing, underwriting (where applicable) and payment will apply to this project.

Steven Hefley
APPLICANT SIGNATURE
3-9-06
DATE

Steven Hefley
PRINTED NAME

CO APPLICANT SIGNATURE

DATE

PRINTED NAME

ConnectOregon Program

Application

PART B - Applicant Qualifications

1. CONTACT INFORMATION

APPLICANT

ORGANIZATION NAME Central Oregon & Pacific Railroad, Inc.	PRIMARY CONTACT PERSON AND TITLE Steve Hefley
ADDRESS 333 S E Mosher	TELEPHONE (541) 957-2512
CITY, STATE AND ZIP CODE Roseburg, OR 97470	FAX (541) 957-0686

CO-APPLICANT/CO SPONSOR

ORGANIZATION NAME	PRIMARY CONTACT PERSON AND TITLE
ADDRESS	TELEPHONE
CITY, STATE AND ZIP CODE	FAX

2. IS/ARE THE APPLICANT(S) CURRENT ON ALL STATE AND LOCAL TAXES, FEES AND ASSESSMENTS?

☒ YES ☐ NO If NO Explain

--

PART C - Project Description

3. PROJECT DESCRIPTION AND PURPOSE: Summarize the project's description and purpose Provide maps in 8 1/2 "X 11" format as hard copy only

This project provides a less expensive transportation alternative for the Oregon forest products industry, while reducing the growth of heavy truck trips on Oregon roads and highways. Preserving and rehabilitating the Central Oregon & Pacific Railroad (CORP) main lines, and making them more efficient, will provide better track which can operate at higher speeds. This will result in an increase in overall capacity for the CORP railroad system, with the associated lower costs for shippers, and the ability to avoid diversion of lumber traffic to truck.

CORP has entered into a two (2) year compliance agreement with the FRA to address the overall condition of CORP's tracks. CORP and RailAmerica are committed to working with the various regulatory agencies, including FRA and ODOT, to ensure that CORP may continue to provide safe and efficient rail transportation services to the public.

The quantifiable benefits of this project are derived from determining the increased efficiencies that these track improvements will bring to the railroad. These track improvements will upgrade the overall condition of the track which will allow for higher train speeds while reducing slow orders. By increasing speeds and eliminating slow orders, trains move more quickly, and service is accomplished in a more timely fashion. Presently, cars spend on the average 5.87 days between inbound and outbound interchanges. These improvements will reduce that time by up to one day. This one day reduction is equivalent to a 17 % increase in the entire system capacity from 55,000 carloads per year to 64,000 per year.

Increasing the rail carload capacity provides Oregon forest products shippers a less expensive lower cost transportation option, while avoiding additional truck trips. This has advantage of lowering emissions, reducing highway congestion, and decreasing fuel consumption.

(continued on Addendum Page 8)

4. ConnectOregon (CO) Project Budget

SOURCES OF FUNDS: Please identify the source and amount of moneys comprising your project budget in terms of grants, loans, match and other funds

SOURCES:	AMOUNT	PERCENT OF TOTAL	DATE AVAILABLE	
			CAL YEAR	QUARTER
a. ConnectOregon Grant	\$7,353,762.00	59.4 %	2007	1st
b. ConnectOregon Loan		00.0 %		
c. Required Match (Grants - 20% of Total Project) 1	\$5,025,812.00	40.6 %	2006	1st
d. Other Leveraged Funds (2)		00.0 %		
e. Other Leveraged Funds (2)		00.0 %		
f. Other Non-Leveraged Funds (Describe)		00.0 %		
g. Other Non-Leveraged Funds (Describe)		00.0 %		
TOTAL*	12,379,574	100 %		

(1) Please describe the source and timing of the 20% match shown above. If applicable include the cost basis of property.

The 40.6% match will be provided by Central Oregon & Pacific capital expenditures on track upgrades in the amounts of \$1,009,768 within Region 2 and \$4,016,044 within Region 3 (total of \$5,025,812) in FY 2006.

(2) If your project leverages other funds beyond the ConnectOregon grants, loans and match required for your project, please describe the source, timing and basis for valuing the other funds. Leveraged funds must be shown in 1(d) and 1(e) above.

USES OF FUNDS: Please identify the proposed uses and amount of moneys comprising the project budget.

USES:	AMOUNT	PERCENT OF TOTAL	DATE AVAILABLE	
			CAL YEAR	QUARTER
Labor (Payroll)	\$977,986.00	07.9 %		
Contracted Services (If Known)	\$4,419,508.00	35.7 %		
Materials and Supplies	\$6,982,080.00	56.4 %		
Capital Outlay (Land)		00.0 %		
Capital Outlay (Buildings)		00.0 %		
Capital Outlay (Equipment)		00.0 %		
Other (Describe):		00.0 %		
Other (Describe):		00.0 %		
Other (Describe):		00.0 %		
Other (Describe):		00.0 %		
TOTAL*	12,379,574	100 %		

*Totals for Sources of Funds and Uses of Funds must be equal.

5. REAL ESTATE

EXACT ADDRESS OR LEGAL DESCRIPTION

a IS PROPERTY OWNED BY APPLICANT(S)? ☒ YES ☐ NO

PURCHASE PRICE

DATE

b IS PROPERTY TO BE PURCHASED? ☐ YES ☒ NO

PURCHASE PRICE

DATE

c IS PROPERTY TO BE LEASED? ☐ YES ☒ NO

d DOES THE PROJECT INCLUDE
EASEMENTS OR DONATED PROPERTY? ☐ YES ☒ NO

Provide any additional details here.

Track improvements will be on existing railroad right of way

PART D - Project Considerations

NOTE The independent review consultant who will evaluate the project may consider other published or publicly available information when conducting this review

6. TRANSPORTATION COST REDUCTION: Describe how the project reduces transportation costs for Oregon businesses

This project will reduce transportation costs for Oregon forest products industries by providing and maintaining a less expensive transportation alternative. Lower rail rates vs truck will result in a savings of up to \$17,000,000 per year.

This investment will make these Oregon industries more competitive against other forest products businesses throughout the United States.

The existing track condition and track speeds CORP can only hamper future intermodal connectivity as the demand for railcars grows. If the line cannot support an influx of additional rail cars to service increased future demand, the number of opportunities to increase industry output by shipping via rail is diminished

7. MODAL CONNECTIVITY: Describe how the project benefits or connects two or more modes of transportation.

This project will provide an alternative to truck transportation for Oregon businesses by making the CORP more efficient, and capable of handling more carloads of traffic.

The avoided truck trips will result in reduced highway congestion from truck in the Roseburg area. The avoidance of up to 63,000 annual truck trips will result in avoiding an increase in the truck Average Annual Daily Traffic (AADT) of up to 4%

The applicant proposes to quantify the improved connectivity by showing the increase in forest products carloads.

8. STATEWIDE OR REGIONAL TRANSPORTATION LINK: Describe how the project creates a critical link in a statewide or regional transportation system.

This project will connect Oregon businesses to the national rail system, making them more competitive. Using rail reduces congestion on the highway system while lowering transportation costs for the businesses. The reduced congestion will be Statewide by avoiding up to 63,000 additional annual truck trips on I-5 by increasing rail carloads up to 9,000 per year

The applicant proposes to quantify the improvements in terms of additional carloads of forest products earned and job creation

9. COST BORNE BY APPLICANT(S): Provide the amount by which the project will exceed, or, provide a match beyond ConnectOregon's minimum grant-match requirement of 20%

The 40.6% match will be provided by Central Oregon & Pacific capital expenditures on track upgrades in the amount of \$5,025,812 in FY 2006

The full project is beyond the ability of the applicant to finance with outside sources due to the low rate of return.

10. PERMANENT AND CONSTRUCTION JOBS CREATION/RETENTION: Describe how the project creates and retains permanent and construction jobs in Oregon

Job estimates are derived from a previous study conducted on the impact of a CORP Winchester Rail Yard construction project, based on a percentage of the carload growth of that project

Construction Jobs These will be primarily limited to a track construction firm, and are assumed to be out of State. This would total about 26 jobs, and these would be for the duration of the project, or about 12 months.

Other Direct Jobs, Not Including Construction. This project will provide infrastructure that could result in the creation of an average of up to 571 railroad and forest products industry jobs per year in the Southwest Oregon Region

As a result of this project improvement, railroad employment is could to grow from 121 jobs to 137 jobs. This employment increase is directly related to the expanded capacity provided by the project and will not take place without the improvements. The average annual wage of new CORP rail jobs is estimated to be \$55,000 based on 2005 year end data and forecasted 2006 trends.

(continued Addendum Page 9)

11. ANTICIPATED CONSTRUCTION START DATE OR EQUIVALENT:

1 January 2006

12. ANTICIPATED PROJECT COMPLETION DATE:

31 December 2007

13. CONSTRUCTION READINESS: Provide a project timeline and describe where the project is on this timeline in relation to planning, design and permitting issues

The project requires no rezoning, land use permits, or environmental approvals

14. PROJECT OPERATIONS: How will the ongoing maintenance, operation and replacement of the project be financed?

The maintenance operation and replacement of the project will be financed by the Central Oregon & Pacific Railroad capital expenditure program. Those funds will be provided by the additional revenue received as a result of this project

15. OTHER CONSIDERATIONS AND INFORMATION : Describe any other considerations and information you would like taken into account about the project

The project uses the efficiencies of rail to reduce emissions and fuel consumption vs. truck. This will result in avoiding additional emissions, and savings of 1 million gallons per year in diesel fuel consumption

PART E - Supporting Materials: Provide a list here of supporting materials that will be provided as part of your hard copy submission

The following additional materials are provided in the hard copy application:

Attachment A. CORP Track Improvement Public Benefit Brief

Attachment B. Economic & Social Benefit of Diverting Truck Traffic with CORP Yard Improvements

Attachment C. CORP Track Project List Spreadsheets

Attachment D. CORP Track Improvement Public Benefit Spreadsheets

PART C - 3. PURPOSE

Aside from reducing rail traffic congestion and shipping costs, the project will also foster benefits for the community of Roseburg. Faster trains spend less time blocking grade crossings. This has the impact of reducing traffic congestion in central Roseburg, improving emergency vehicle response times, improving air quality, and reducing fuel consumption in the community.

The CORP is comprised of approximately 439 miles of mainline. These improvements would consist of providing heavier rail, replacing ties, replacing turnouts, bridge and tunnel improvements, surfacing and smoothing the roadbed, and providing for signal improvements. The major components of this upgrade program are as follows:

- Relay 79,060 LF of curve worn rail on various curves on the Roseburg, Siskiyou, and Coos Bay Subdivisions
- Relay 141,122 LF of 90# jointed rail with 112# or larger Continuous Welded Rail on the Roseburg Sub
- Replace 85,358 defective cross ties
- Surface 111 miles of track
- Renew Old Hwy 99 crossing at MP 557.3
- Replace 249 switch ties at various locations
- Replace 5 turnouts at Dillard Yard
- Make repairs on various bridges based on the annual bridge inspection
- Eliminate remaining pole line and replace with electracode
- Grind 83.84 Pass miles between MP 403.16 - 487
- Repair tunnel lining in tunnels 13, 15, and 20 on the Coos Bay Subdivision
- Eliminate 350 joints in welded rail

The CORP will complete the following projects in FY 2006 as the match for the funds:

- Relay 79,060 LF of curve worn rail on various curves on the Roseburg, Siskiyou, and Coos Bay Subdivisions.
- Relay 62,063.2 LF of 90# jointed rail with 136# Continuous Welded Rail on the Roseburg Sub
- Replace 35,358 defective cross ties
- Surface 80 miles of track
- Renew Old Hwy 99 crossing at MP 557.3
- Replace 249 switch ties at various locations
- Replace 5 turnouts at Dillard Yard
- Make repairs on various bridges based on the annual bridge inspection
- Eliminate pole line and replace with electracode

The following are the projects proposed for the ConnectOregon grant funds in order of priority:

- Replace 50,000 defective cross ties
- Surface 31 miles of track
- Repair tunnel lining in tunnels 13, 15, and 20 on the Coos Bay Subdivision
- Relay 79,000 LF of 90# jointed rail with 112# or larger Continuous Welded Rail on the Roseburg Sub
- Make repairs on various bridges based on the annual bridge inspection
- Eliminate remaining active pole line and replace with electracode
- Grind 83.84 Pass miles between MP 403.16 - 487
- Eliminate 350 joints in welded rail

Completing any or all of the above improvements using ConnectOregon would contribute to the higher train speeds desired and provide some of the benefits previously described.

ADDENDUM PAGE 9: Attach additional text here as necessary, identifying the corresponding application question number you are completing.

PART D - 10. PERMANENT AND CONSTRUCTION JOBS CREATION/RETENTION

Our analysis indicates that with added rail capacity, employment in the forest products industry could expand by 550 jobs over the 20 year period following completion of the proposed project. Forest products jobs created are estimated at \$42,408 per year based on computer modeling estimates. These wages are above the State average and all direct jobs are expected to be family wage jobs.

We believe that the Medford-White City areas and the North Spit area of the Port of Coos Bay present the greatest potential for attracting new industries and family wage jobs to the CORP. Since 2002, the following new industries have located on CORP:

Company	Jobs	Year
Louisiana-Pacific (Panel Products), Rogue River	40	2002
Westwood, Reedsport	30	2004
McGovern Metals, Roseburg	6	2004
HFP Transloading, Grants Pass	4	2004
American Bridge, Reedsport	120	2004
Goshen Reload, Goshen	4	2005
Southport Lumber, North Bend	70	2005
South Coast Lumber, Merlin	2	2005
Amy's Kitchen, Central Point	200	2006
Williams' Bakery, Springfield	275	2006
Total New Customer Jobs	751	

Without the additional improvements offered by the track projects, this pace of industrial development may lessen as customers seeking rail service are forced to consider railroads in other geographic areas as an alternative to the operational capacity constrained CORP.

Indirect and Induced Jobs: In addition to the direct jobs described above, we estimate that the project could create an additional 1,523 indirect and induced jobs per year over the 22 year period including construction and operation of the improvements.

ADDENDUM PAGE 10: Attach additional text here as necessary, identifying the corresponding application question number you are completing.

ADDENDUM PAGE 11: Attach additional text here as necessary, identifying the corresponding application question number you are completing

ADDENDUM PAGE 12: Attach additional text here as necessary, identifying the corresponding application question number you are completing.

Attachment A:

CORP Track Improvement Public Benefit Brief

Public Benefit Central Oregon & Pacific Railroad Track Improvements

- **Avoided Social Costs from Additional Truck Trips
(Congestion, air pollution, noise, and accident):**
 - **Total: \$8,600,000**
 - **Net Present Value (7% Gov't discount Rate): \$4,200,000**
- **Reduced Traffic Congestion:**
 - **Avoids Up To 63,000 Annual Truck Trips**
 - **Reduces Truck Average Annual Daily Traffic (AADT) in Roseburg area by up to 4%**
- **Reduced Emissions:**
 - **Decreased NOx emissions by 35 tons in 2012**
- **Reduced Fuel Consumption**
 - **Decreased Fuel Consumption by up to 1 Million Gallons Annually by 2015**
- **Reduced Costs to Shippers**
 - **Reduces transportation and logistics costs by up to \$17,000,000 per year for Oregon forest products industries.**

Attachment

B:

Economic & Social Benefit of Diverting Truck Traffic with CORP Yard Improvements

**Economic & Social Benefit
of
Diverting Truck Traffic
with
Central Oregon and Pacific Railroad
Track Improvements**

Track Improvements

Public Benefit from Marginal Cost Avoidance of Additional Truck Trips

The public benefit of the proposed CORP track improvements is based on avoidance of marginal highway costs. These costs are from the impact of each additional truck upon Oregon freeways (I-5). As Oregon recovers most costs associated with additional pavement damage, the costs evaluated are the social costs including congestion, air pollution, noise, and accidents.

The 2005 base year carload traffic was over 52,000 carloads. Existing maximum mainline capacity is approximately 55,000 carloads per year. The proposed track improvements yard would increase that capacity to approximately 64,000 carloads per year.

Each carload generates the equivalent of 3.5 loaded truck trips. Since lumber (the major commodity moved by CORP) uses unique equipment, the possibility of a backhaul is nil, and this empty backhaul is also attributed to a carload for another 3.5 trips.

The marginal costs are calculated by multiplying a cost factor per mile for each truck trip, based on truck weight, and urban/rural freeway designation. The lighter weights were used to calculate the empty backhaul. The diverted truck traffic would use a mix of I-5 northbound or southbound. The total truck trips were evenly split between northbound and southbound. The calculations are on the spreadsheets associated with this study.

The results are calculated with a carload growth rate of 5% and a Government discount rate of 7%. This gives a net present value of the public benefits from avoided marginal costs of \$4,200,000.

Marginal Cost Calculations

From 2000 FHWA update to the 1997 Highway Cost Allocation Study.

Table 13. 2000 Pavement, Congestion, Crash, Air Pollution, and Noise Costs for Illustrative Vehicles Under Specific Conditions						
Vehicle Class/Highway Class	Cents per Mile					
	Pavement	Congestion	Crash	Air Pollution	Noise	Total
Autos/Rural Interstate	0	0.78	0.98	1.14	0.01	2.91
Autos/Urban Interstate	0.1	7.70	1.19	1.33	0.09	10.41
40 kip 4-axle S U Truck/Rural Interstate	1.0	2.45	0.47	3.85	0.08	7.88
40 kip 4-axle S U Truck/Urban Interstate	3.1	24.48	0.88	4.49	1.50	34.43
60 kip 4-axle S U Truck/Rural Interstate	5.6	3.27	0.47	3.85	0.11	13.3
60 kip 4-axle S U Truck/Urban Interstate	18.1	32.84	0.88	4.49	1.88	57.77
80 kip 5-axle Comb/Rural Interstate	3.3	1.88	0.88	3.85	0.17	10.08
80 kip 5-axle Comb/Urban Interstate	10.5	18.39	1.15	4.49	2.75	37.28
80 kip 5-axle Comb/Rural Interstate	12.7	2.23	0.88	3.85	0.19	19.85
80 kip 5-axle Comb/Urban Interstate	40.8	20.08	1.15	4.49	3.04	69.64

NOTE: S U = Single Unit, Comb = Combination, Air pollution costs are averages of costs of travel on all rural and urban highway classes, not just Interstate. Available data do not allow differences in air pollution costs for heavy truck classes to be distinguished.

The additional truck trip from the Roseburg area will be 100 miles to the closest rail transload facility. The majority of this mileage is classified as rural. Baseline calculation for the study will be 3.5 truckloads per carload, plus the backhaul. Loaded trucks are considered 80k and the empty at 50 k.

Costs per mile excluding pavement damage are \$0.0715 per mile for rural 80k truck (load), and \$0.0678 per mile for rural 60k truck (empty). Each truck trip at 100 miles each way accounts for \$13.93. Therefore, each carload saves 3.5 x \$13.93 or \$48.75 within the State of Oregon.

Assuming 5% freight rail traffic growth, total social costs avoided from 2008 through 2027 are \$8,600,000. Total social costs considering 7% annual discount rate are \$4,200,000.

Additional Truck Trips Avoided

The track improvements would avoid additional truck trips associated with the shift from rail to truck. Many of the trips would move to another railroad transload facility, while others would be entirely truck and cross the state line. The estimates used in this study were conservative in that they limited the additional truck trips to 100 miles from the area of Roseburg. Trips were evenly split between northbound and southbound on I-5 in the vicinity of Roseburg. This assumption gives the most conservative estimate for truck traffic impacts.

The yard will reduce additional annual truck trips on I-5 by approximately 63,000 by 2015. Most of these truck trips would increase the Average Annual Daily Traffic (AADT) in the area of Roseburg. Truck increase is 2% northbound in 2024, and 4% southbound in 2018.

Reduced Emissions

New requirements for improved diesel emissions technologies will reduce emissions for both truck and rail. But even with these improvements, rail has a lowered rate of emission per ton-mile. For NOx, the estimated reduction in emissions for the year 2012 as a result of avoided truck trips is .4 grams per ton mile. Based upon a count of 165,000 ton-miles, the reduction amounts to 35 tons of NOx in 2012

Reduced Fuel Consumption

Diesel engine design has resulted decreased fuel consumption for both truck and locomotive engines. But using existing fuel consumption rates, the yard could reduce increased fuel consumption due to additional truck trips by up to 1 million gallons per year by 2015.

Lower Shipping costs.

Using the LA Basin as a major consumption market for forest products, analysis shows a transportation rate differential of \$1900 per carload for truck vs rail. This estimate is conservative in that many shipments have an even longer length of haul. The additional logistics costs which could be borne by the forest products industry would be in up to \$17,000,000 per year.

Attachment C:

CORP Track Project List Spreadsheet

CORP Connect Oregon Plan

	Program	Description	Cost	Comments
CORP	Curve Rail (In.ft.)	Relay 79,060 LF of curve worn rail on various curves on the Roseburg, Siskiyou, and Coos Bay Subdivisions.	\$3,390,000	
CORP	OOF Rail (In.ft.)	Relay 141,122 LF of 90# jointed rail with 112# or larger Continuous Welded Rail on the Roseburg Sub.	\$872,686	
CORP	Ties (each)	Replace 85,358 defective cross ties	\$5,093,985	
CORP	Surfacing (miles)	Surface 111 miles of track	\$797,190	
CORP	Crossings (trk)	Renew Old Hwy 99 crossing at MP 557.3	\$50,209	
CORP	Switch Ties(bd.ft.)	Replace 249 switch ties at various locations	\$43,226	
CORP	Turnouts	Replace 5 turnouts at Dillard Yard	\$96,230	
CORP	Bridges	Make repairs on various bridges based on the annual bridge inspection	\$500,000	
CORP	Signals	Eliminate remaining pole line and replace with electracode	\$350,000	
CORP	Grinding	Grind 284 Pass miles between MP 345 - 487	\$222,298	
CORP	Tunnel Repairs	Repair tunnel lining in tunnels 13, 15, and 20 on the Coos Bay Subdivision	\$724,000	
CORP	Joint Elimination	Eliminate 350 joints in welded rail	\$239,750	
CORP	Misc.		\$0	

PROJECT TOTAL \$12,379,574

40.6%

CORP MATCHING FUNDS \$5,025,812

ConnectOregon Funded Projects - ODOT Region 2 \$1,477,492
ConnectOregon Funded Projects - ODOT Region 3 \$5,876,270

CORP Matching Funds Projects

	Program	Description	Cost	Comments	Schedule
CORP	Curve Rail (In.ft.)	Relay 79,060 LF of curve worn rail on various curves on the Roseburg, Siskiyou, and Coos Bay Subdivisions.	\$990,000	Rail purchased in '05 and cost not in this figure	5/1/06 - 8/4/06
CORP	OOF Rail (In.ft.)	Relay 62,063 LF of 90# jointed rail with 136# Continuous Welded Rail on the Roseburg Sub.	\$872,686	Rail purchased in '05 and cost not in this figure	5/1/06 - 8/4/06
CORP	Ties (each)	Replace 39,888 defective cross ties MP 403.16 - MP 430, MP 606 - MP 629	\$2,178,985		05/15/2006 - 8/11/06
CORP	Surfacing (miles)	Surface 80 miles of track (Surfacing limits will mirror the Tie and Rail project limits)	\$574,476		5/15/06 - 8/31/06
CORP	Crossings (trk)	Renew Old Hwy 99 crossing at MP 557.3	\$50,209		10/1/06 - 10/31/06
CORP	Switch Ties(bd.ft.)	Replace 249 switch ties at various locations from MP 560 - MP 565	\$43,226		3/1/06 - 4/30/06
CORP	Turnouts	Replace 5 turnouts at Dillard Yard mp 560.3, MP 560.4, MP 560.5, MP 560.9, MP 561.0	\$96,230		3/1/06 - 4/30/06
CORP	Bridges	Make repairs on various bridges based on the annual bridge inspection	\$200,000		6/1/06 - 8/31/06
CORP	Signals	Eliminate pole line and replace with electracode MP 600 - MP 605	\$20,000		3/1/06 - 5/31/06
CORP	Grinding				
CORP	Tunnel Repairs				
CORP	Joint Elimination				
CORP	Misc.				

CORP TOTAL \$5,025,812

Connect Oregon Funded Projects ODOT Region 3

Priority	Program	Description	Cost	Comments	Schedule
4	Curve Rail (In.ft.)	Relay 60,810 LF of curve worn rail on various curves on the Roseburg, Siskiyau, and Coos Bay Subdivisions.	\$1,845,990		5/1/07 - 8/31/07
	OOF Rail (In. ft.)				
1	Ties (each)	Replace 50,000 defective cross ties MP 487 - MP 539, MP 589 MP 602	\$2,915,000		6/1/07 - 10/31/07
2	Surfacing (miles)	Surface 27.5 miles of track (Surfacing limits will mirror Rail and Tie project limits)	\$197,569		6/15/07 - 11/15/07
	Crossings (trk)				
	Switch				
	Ties(bd.ft.)				
	Turnouts				
5	Bridges	Make repairs on various bridges based on the annual bridge inspection	\$80,000		7/1/07 - 10/31/07
6	Signals	Eliminate remaining active pole line and replace with electracode MP 605 - 620.96, MP 430 - MP 440	\$271,573		3/1/07 - 8/31/07
7	Grinding	Grind 168 Pass miles between MP 403.16 - 487	\$222,298		05/01/07 - 6/15/07
3	Tunnel Repairs	Repair tunnel lining in tunnel 20 on the Coos Bay Subdivision	\$152,040		4/1/07 - 7/31/07
8	Joint Elimination	Eliminate 280 joints in welded rail MP 540 - MP 620.96	\$191,800		3/1/07 - 6/30/07
	Misc.				

CONNECT OREGON TOTAL \$5,876,270

Connect Oregon Funded Projects ODOT Region 2

Priority	Program	Description	Cost	Comments	Schedule
2	Curve Rail (in.ft.)	Relay 18,250 LF of curve worn rail on various curves on the Roseburg and Coos Bay Subdivisions.	\$554,010		5/1/07 - 8/31/07
	OOF Rail (in. ft.)				
	Ties (each)				
3	Surfacing (miles)	Surface 3.5 miles of track (Surfacing limits will mirror Rail project limits)	\$25,145		6/15/07 - 11/15/07
	Crossings (trk)				
	Switch Ties(bd.ft.)				
	Turnouts				
4	Bridges	Make repairs on various bridges based on the annual bridge inspection	\$220,000		7/1/07 - 10/31/07
5	Signals	Eliminate remaining active pole line and replace with electracode MP 630.7 - MP 644.1	\$58,427		3/1/07 - 8/31/07
	Grinding				
1	Tunnel Repairs	Repair tunnel lining in tunnels 13 and 15 on the Coos Bay Subdivision	\$571,960		4/1/07 - 7/31/07
6	Joint Elimination	Eliminate 70 joints in welded rail MP 620.96 - MP 644	\$47,950		3/1/07 - 6/30/07
	Misc.				

CONNECT OREGON TOTAL \$1,477,492

CORP Rail Projects

Curve #	MP	Degree	East/West Rail	VHL	GFL	Existing Rail	Length	Relay Year	Comments
403D	403 5	8	West	1/4	1/2	113	800	2008	
405E	405 4	11	East		5/8	132	200	2008	
405F	405 45	9	East	1/4		132	200	2008	
405G	405 5	9	East		5/8	138	100	2008	
406D	406 7	10	West	1/4	1/2	132	300	2008	
407A	407 3	10	West		1/2	132	800	2008	
408A	408 2	10	East		5/8	132	800	2008	
408D	408 8	10	East		1/2	113	450	2008	
412A	412 3	10	East	5/8		132	550	2008	
412A	412 3	10	West	1/2		132	550	2008	
413A	413 15	10	West	5/8		132	700	2008	
413A	413 15	10	East		1/2	132	700	2008	
414F	414 8	10	West	5/8		132	500	2008	
414F	414 8	10	East		5/8	132	500	2008	
416F	416 7	10	East		5/8	132	1000	2008	
417A	417 15	10	East		5/8	132	1000	2008	
418A	418 2	10	West	1/4	5/8	132	750	2008	
418E	418 8	10	West	1/2		132	650	2008	
418E	418 8	10	East		1/2	132	650	2008	
419B	419 45	10	East		5/8	132	600	2008	
419C	419 55	10	West		1/2	113	500	2008	
495	495	10 5	West			113	800	2008	
495	495	10 5	East			113	800	2008	
495A	495 1	8 6				113	700	2008	
495C	495 4	9				113	500	2008	
496B	496 4	10				113	800	2008	
497C	497 6	10				113	700	2008	
503D	503 9	8 5				113	820	2008	
518B	518 15	8	West	5/8		138	650	2008	
533	532 9	10				113	1350	2008	
534C	534 6	4	West			112	1000	2008	And tangent north
534C	534 6	4	East			112	1000	2008	And tangent north
535	534 9	10	West			113	1380	2008	
535	534 9	10	East			113	1380	2008	
553D	553 9	10	West	1/4	3/8	112	400	2008	
555A	555 5	8/3	West	1/4	3/8	113	600	2008	8 deg portion of compound only
564D	564 3	8	East	3/8	3/8	112	300	2008	
564G	564 6	5	West	1/4	3/8	113	500	2008	
565	564 9	6	West	1/4	3/8	112	1300	2008	
567	566 9	4	West	1/4	3/8	113	1100	2008	
571B	571 7	5	West			113	500	2008	
571B	571 7	5	East			113	500	2008	
571C	571 8	4	West			113	600	2008	
571C	571 8	4	East			113	600	2008	
573	573 15	7	West	1/2		138	1500	2008	
573	573 15	7	East	1/2	1/4	138	1500	2008	
573A	573 35	7	West	3/8	1/2	132	500	2008	
578	578 15	5 5	East	3/8	1/2	113	400	2008	
578A	578 25	5 5	West	3/8	1/2	113	800	2008	
588	588	8	West	3/8	1/2	112	1000	2008	
588B	588 15	7	West	1/4	1/2	112	650	2008	
594C	594 75	11	West	5/8		138	800	2008	
595A	595 55	4	West	3/8	3/8	113	800	2008	
598C	598 7	10	East	1/4	1/2	133	1500	2008	
607	607 3	6	East	1/2	1/2	138	1800	2008	
607A	607 5	6	West	3/8	1/2	138	750	2008	
610B	610 6	4	West	1/4	1/2	133	1050	2008	
618B	618 6	7	West	3/8	5/8	132	950	2008	

CORP Rail Projects

618C	618 7	8	West	5/8		132	700	2006	
618C	618 7	8	East	1/2	3/8	132	700	2006	
620A	620 1	10	West	3/8	1/2	132	900	2006	
620A	620 1	10	East	5/8		132	900	2006	
621	620 9	7	West	3/8	1/2	132	1800	2006	
643B	643 3	6	East	1/4	5/8	132	1100	2006	
666A	666 7	8	East	1/2		113	1050	2006	
670	370	8	West	1/2	3/8	113	800	2006	
674	674	6	West	3/8	3/8	113	1800	2006	
683	682 9	6	West	1/4	1/2	113	2290	2006	
686A	686 4	6	East	1/4	3/8	113	1160	2006	
688	687 9	8	West	1/4	3/8	113	700	2006	
688C	688 6	4	West	1/4	1/2	115	900	2006	
689	688 9	4 1/2	West	1/4	1/2	115	2290	2006	4 deg portion only
689A	689 6	8 1/4	East	1/4	1/2	113	2290	2006	
690A	690 2	3	West	1/4	3/8	112	620	2006	
691	691 15	6	West	1/4	1/2	112	610	2006	
694	694 1	6	East	1/4	1/2	113	800	2006	
699	698 9	4	East	1/4	3/8	113	1300	2006	
703D	703 6	5	East	1/4	3/8	115	468	2006	
704A	704 25	7	East	3/8	1/2	132	1400	2006	
706	706 1	4	East	1/4	1/2	115	3200	2006	Both rails of curve
719B	719 6	7	East	1/4	5/8	113	700	2006	
719C	719 8	8	West	1/4	5/8	132	1200	2006	
723	723	4	East	1/4	1/2	115	900	2006	
726	725 9	6	East	1/4	5/8	132	900	2006	
726C	726 6	8	East	1/2	1/2	136	1320	2006	
735	735	4	West	1/4	1/2	115	1300	2006	
735B	735 4	4	West	1/4	1/2	115	600	2006	
736C	736 7	5	East	1/4	1/2	112	500	2006	
765B	765 85	6	West	3/8	1/2	115	500	2006	
Tan	516 45					90	700	2006	Second Hand Rail - Both
517C	517 35	9				113	750	2006	Second Hand Rail - High
517D	517 6	9				113	850	2006	Second Hand Rail - High
524B	523 4	10				132	600	2006	Second Hand Rail - High
525B	525 3	4				132	600	2006	Second Hand Rail - High
531	531	8				113	400	2006	Second Hand Rail - High
536B	536 5	8				113	1400	2006	Second Hand Rail - High
559D	559 9	4				90	8300	2006	SH Rail - Curve and Tangent
561	561	3				90	14200	2006	SH Rail - Curve and Tangent
Tan	562 6					90	6600	2006	Second Hand Rail - Both
Tan	566 3					90	5500	2006	Second Hand Rail - Both
Tan	5667					90	17100	2006	Second Hand Rail - Both
Tan	570 6					90	5500	2006	Second Hand Rail - Both

**Curve Rail Total
OOF Rail Total**

**79238
62500**

ConnectOregon Rail Projects

Curve #	MP	Degree	East/West Rail	VHL	GFL	Existing Rail	Length	Relay Year	Comments
403E	403.75	4	East	1/4	3/8	112	500	2007	
404A	404.25	9	West		1/2	132	600	2007	
405F	405.45	9	West	3/8	3/8	136	200	2007	
405J	405.9	7	East	1/4	1/2	136	200	2007	
406A	406.1	10	West		1/2	132	200	2007	
406E	406.8	10	East	1/4	1/2	136	500	2007	
408A	409.2	10	East		1/2	132	500	2007	
409C	409.5	10	East		1/2	132	700	2007	
409D	409.7	7.5	West	3/8		113	1000	2007	
410	410	9	East		1/2	132	550	2007	
410C	410.65	10	East		1/2	132	800	2007	
411	411	10	West	3/8		132	450	2007	
411	411	10	East		3/8	132	450	2007	
413C	413.6	12	West	1/2		132	1200	2007	
415E	415.75	4	West	1/2		132	550	2007	
416B	416.2	3.5	East	1/2		136	300	2007	
416D	416.5	7	East		1/2	132	400	2007	
416E	416.55	10	West		1/2	132	450	2007	
417C	417.6	8	East		1/2	132	500	2007	
418	418	14	East		1/4	136	2000	2007	Hi to low
418B	418.35	8	East		1/2	136	600	2007	
418D	418.55	9	West		1/2	132	400	2007	
418D	418.55	9	East	3/8		132	400	2007	
419D	419.7	10	East		1/2	132	300	2007	
419E	419.8	10	West		1/2	132	500	2007	
419F	419.9	10	East		1/2	132	350	2007	
420C	420.25	10	East	1/2		136	600	2007	
420E	420.7	10	East	1/4	1/2	132	700	2007	
421B	421.35	8	West	1/2		132	400	2007	
424B	424.3	5	West		1/2	132	1000	2007	
426A	426.3	7.5	East		1/2	132	1000	2007	
454	453.9	6	East	1/4	3/8	113	1900	2007	
456A	456.6	6	West		3/8	112	2200	2007	
468	468.15	4	West		3/8	113	2000	2007	
551B	551.5	8	West		1/2	132	400	2007	
553	553.1	8	West	1/4	1/2	132	1000	2007	
563B	563.6	6	West	1/4	3/8	113	300	2007	
563E	563.9	6	West	1/4	3/8	113	200	2007	
564A	564.05	4	West	1/4	3/8	112	200	2007	
564H	564.7	6	East	1/4	3/8	113	500	2007	
573A	573.35	7	East	3/8		132	500	2007	
589A	589.4	7	West	1/4	3/8	132	800	2007	
589A	589.4	7	East	1/2		132	800	2007	
594A	594.45	8	East	3/8	3/8	136	800	2007	
594C	594.75	11	East	1/4	3/8	136	600	2007	
595	595.1	8	West		1/2	136	1200	2007	
596A	596.65	6	West	3/8	3/8	136	1000	2007	
596A	596.65	6	East	1/2		136	1000	2007	
596B	596.85	6.5	East	3/8	3/8	136	600	2007	
597	597	6	West	3/8	3/8	136	700	2007	
606	606.4	4	West	3/8	3/8	132	1400	2007	
618D	618.8	8	West	3/8	3/8	136	900	2007	
620	620	7	West	1/2		132	600	2007	
620	620	7	East	1/2	3/8	132	600	2007	

ConnectOregon Rail Projects

643A	643 1	6	West	1/2		132	800	2007	
644A	644 6	4	West	1/2		132	2000	2007	
644A	644 6	4	East	3/8	1/2	132	2000	2007	
667B	667 4	8	West	1/4	3/8	132	1000	2007	
677B	677 6	6	East	1/2		136	1100	2007	
681B	681 6	6	West	1/4	3/8	132	1800	2007	
684A	684 45	4	West		3/8	113	900	2007	
688	688 1	6	East	3/8	1/4	136	1150	2007	
688	688 1	6	West		1/2	136	1150	2007	
698	698 2	8	East	1/2		136	1000	2007	
703C	703 5	6	West	1/4	3/8	115	500	2007	
707B	707 4	4	East	1/4	3/8	115	550	2007	
718	718 1	3 5	East	3/8	3/8	115	1400	2007	
718B	718 8	4	East	1/4	3/8	115	750	2007	
720	720	6	East	1/4	1/2	136	1200	2007	
724A	724 2	7	West	1/4	3/8	113	950	2007	
729A	729 1	4	West		3/8	115	900	2007	
740	740 5	5	West	1/4	1/2	115	2380	2007	
749	749 2	3/5	West	1/4	1/2	115	1400	2007	5 deg portion only
749A	749 4	5	East	1/4	1/2	110	1200	2007	
406	406	7 5	East	1/4	3/8	136	300	2007	
416A	416 15	10	West		3/8	132	700	2007	
422B	422 45	10	West		3/8	132	850	2007	
578B	578 4	5	West		3/8	132	900	2007	
579	579 3	3	West		3/8	132	1100	2007	
591B	591 8	6	West		3/8	132	1100	2007	
599 2	570 3	tan	both				11620	2007	

Rail Relay Total 79000

Attachment D:

CORP Track Improvement Public Benefit Analysis Spreadsheets

Central Oregon & Pacific Track Project Impact Analysis

		2008	2007	2006	2009	2010	2011	2012	2013	2014	2015	2016	2017	2027
Annual Carload Demand		55,054	57,808	60,697	63,731	66,918	70,264	73,777	77,466	81,339	85,408	89,577	94,160	153,377
<i>Without Track Improvements</i>														
Actual Annual Carloads		55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000	55,000
Carloads Diverted to Truck		54	2,808	5,897	8,731	11,918	15,264	18,777	22,466	26,339	30,408	34,577	39,160	98,377
Additional Truck Trips		375	19,644	39,876	61,120	83,426	106,847	131,440	157,262	184,375	212,843	242,736	274,122	688,641
<i>With Track Improvements</i>														
Actual Annual Carloads		55,000	55,000	60,697	63,731	64,000	64,000	64,000	64,000	64,000	64,000	64,000	64,000	64,000
Carloads Diverted to Truck		54	2808	0	0	2918	6264	9777	13466	17339	21408	25677	30160	89377
Additional Truck Trips		375	19644	0	0	20426	43847	69440	94262	121375	149843	179736	211122	625641
Truck Trips Avoided with New Yard		0	0	39,876	61,120	63,000	63,000	63,000	63,000	63,000	63,000	63,000	63,000	63,000

Base Year Carloads - 2005	52,432
Existing Railroad Capacity	55,000
CORP Annual Carload Growth	5%
Existing System Dwell (days)	5.87
Improved System Dwell (days)	5.87
Additional Capacity From Track Improvements	64,370

Base Year Carloads - 2005
Existing Railroad Capacity
CORP Annual Carload Growth
Existing System Dwell (days)
Improved System Dwell (days)
Additional Capacity From Track Improvements

Central Oregon & Pacific Track Project Impact Analysis

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2027
Additional Truck Trips	0	0	39,876	61,120	63,000	63,000	63,000	63,000	63,000	63,000	63,000
Public Costs - Other	\$0	\$0	\$277,737	\$425,701	\$438,795	\$438,795	\$438,795	\$438,795	\$438,795	\$438,795	\$438,795
10 Year											
Total Public Costs - Other	\$4,213,798										
NPV Public Costs - Other	\$2,728,928										
20 Year											
Total Public Costs - Other	\$8,601,748										
NPV Public Costs - Other	\$4,193,124										

Public costs are social costs from additional truck trips including congestion, air pollution, noise, and accidents
 Pavement damage costs are excluded as these additional costs are recovered by truck VMT fees

Miles per Truck Trip
 Public Discount Rate

100
7%

Load	cents per mile
Pavement - Urban	40 9
Pavement - Rural	12 7
Other - Urban	28 64
Other - Rural	7 15
Empty	
Pavement - Urban	10 5
Pavement - Rural	3 3
Other - Urban	26 78
Other - Rural	6 78

Central Oregon & Pacific Track Project Impact Analysis

	2007	2008	2009	2010	2011	2012	2013	2014	2027
Additional Truck Trips	0	39,876	61,120	63,000	63,000	63,000	63,000	63,000	63,000
Additional VMT	0	3,987,616	6,111,997	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000
Additional Traffic Without Track Improvement									
MP 129 22 (Northbound)									
Total AADT		32300							46900
Truck AADT		3898							
% Truck		12.07%							
Additional Truck AADT									121
Increased Truck AADT 2024									2.1%
Total % Increase in 2024									0.3%
MP 119 51 (Southbound)		1998							2018
Total AADT		39300							54100
Truck AADT		1796							
% Truck		6.13%							
Additional Truck AADT									121
Increased Truck AADT 2024									3.7%
Total % Increase in 2018									0.2%
Data from ODOT OTMS Traffic Volumes and Vehicle Classification tables									

Central Oregon & Pacific Track Project Impact Analysis

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2027
Additional Truck Tnps	0	0	39,876	61,120	63,000	63,000	63,000	63,000	63,000	63,000
Additional Ton-miles	0	0	49,845,198	76,398,957	78,750,000	78,750,000	78,750,000	78,750,000	78,750,000	78,750,000
Additional Tons Nox	0		36		48		35			
Additional Fuel Consumption (gal)	0	0	643,003	985,558	1,015,875	1,015,875	1,015,875	1,015,875	1,015,875	1,015,875

Nox Emissions (g/ton-mile)	2006	2008	2010	2012
Truck	15	1	0.8	0.65
Rail	0.7	0.35	0.25	0.25

Fuel Consumption per Ton-mile	
Truck	0.0179
Rail	0.0050

Additional Shipper Costs

Central Oregon & Pacific Track Project Impact Analysis

	2006	2007	2008	2009	2010	2011	2012	2013	2027
Additional Loaded Truck Trnps	0	0	19,938	30,580	31,500	31,500	31,500	31,500	31,500
Additional Shipper Costs	\$0	\$0	\$11,014,934	\$16,883,081	\$17,402,400	\$17,402,400	\$17,402,400	\$17,402,400	\$17,402,400
10 Year									
Total Add'l Shipper Costs									
Avg Per Year									
20 Year									
Total Add'l Shipper Costs									
Avg Per Year									

Roseburg to LA Basin

Rail Rate (HC CB Car)

Truck Mileage

Truck Rate Per Mile

Total Truck Rate

	\$4,694
	788
	\$2.40
	\$1,893.60

PATTON

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Oregon International Port of Coos Bay – Feeder Line
Application - Coos Bay Rail of the Central Oregon &
Pacific Railroad, Inc.

)
)
) Docket No. 35160
)
)

VERIFIED STATEMENT OF STEVEN PATTON

My name is Steven Patton. I am a track inspector for the Central Oregon & Pacific Railroad, Inc. ("CORP"). My business address is 333 Southeast Mosher, Roseburg, OR. I have more than 30 years of experience in the rail industry, most of which has been spent working on what is now CORP's Coos Bay Subdivision between Milepost 763.130 near Cordes, OR and Milepost 652.114 near Danebo, OR. I began my railroad career with the Southern Pacific Transportation Company ("SPT") in 1976 as a labor operator assigned to the SPT Track Inspector. In that position, I was responsible for operating the high-rail vehicles and/or motor vehicles in which track inspections were conducted. For approximately 15 of the 19 years that I worked for SPT, I was assigned to the territory that included the Coos Bay Subdivision. As a result, I participated regularly in track inspections of the Coos Bay Subdivision, and became familiar with the condition of that line during the period of in which SPT owned it.

When CORP purchased its current rail lines (including the Coos Bay Subdivision) from SPT in late 1994, I joined CORP as Track Inspector. My responsibilities as Track Inspector include regular inspections of CORP's rail lines. Based upon my experience, I have first-hand knowledge regarding the condition of the Coos Bay Subdivision, and the level of maintenance of that line, over the past 30 years, including the time SPT operated the line, the time at which CORP acquired the line from SPT, and the time during which CORP has owned and operated the line.

The purpose of this Verified Statement is to respond to allegations by the Oregon International Port of Coos Bay (the "Port") and certain other parties that CORP has neglected or failed to maintain the Coos Bay Subdivision, and that, as a result, the line is in substantially worse condition than it was at the time SPT sold it to CORP. Such accusations are not true. As my testimony will show, the Coos Bay Subdivision was in a deteriorated condition at the time it was purchased by CORP, due to cutbacks in maintenance by SPT in the years leading up to the sale. Indeed, the overall track condition of the Coos Bay Subdivision today is no worse than it was at the time CORP purchased it. Moreover, the tunnels along the line, which are a century old, were already in a very deteriorated condition at the time of the sale to CORP. Until the time of the embargo in September 2007, CORP continued SPT's practice of performing sufficient tunnel maintenance to permit continued train operations.

When I began working for SPT in 1976, the Coos Bay Subdivision handled a far greater volume of traffic than it does today. The challenging terrain and climate in which the Coos Bay Subdivision is located have always made it an expensive line to maintain. Nevertheless, during the 1970's and early 1980's, the line was well-maintained by SPT, generally to FRA Class 2 and Class 3 standards, permitting speeds of up to 30 MPH and 40 MPH. In addition, SPT performed regular maintenance work on the tunnels along the Coos Bay Subdivision. As a Class I railroad, SPT had several dedicated tunnel maintenance crews that were responsible for performing tunnel work both on the Coos Bay Subdivision and elsewhere on the SPT system. Several tunnels on the Coos Bay Subdivision, including Tunnel 15 — one of the tunnels that caused CORP to embargo the line in 2007 — showed substantial signs of deterioration even during the 1980's and required significant attention from SPT repair crews.

Over time, SPT did not sustain its prior level of maintenance on the Coos Bay Subdivision. Beginning in the late 1980's — a time when traffic on the line was decreasing — SPT performed less maintenance on the Coos Bay Subdivision than it had previously. As a result, the quality of the track began to decline in the early 1990's. By the time the Coos Bay Subdivision was sold to CORP at the end of 1994, a substantial portion of the line had been reduced to FRA Class 1 track standards, with a maximum speed limit of 10 MPH. During the last four to five years before it sold the Coos Bay Subdivision to CORP, SPT did not perform any significant rehabilitation of the aging tunnels on the line

As a result when CORP assumed operation of the Coos Bay Subdivision, the line suffered from a substantial amount of deferred maintenance. While some of the line consisted of FRA Class 2 track, significant portions were Class 1 track. No substantial tunnel work had been performed in five years. Any suggestion that CORP bought a rail line in pristine condition is simply not correct.

In the years since it acquired its rail lines (including the Coos Bay Subdivision) from SPT, CORP has invested substantial amounts to maintain those lines. As witness Lundberg testifies, CORP has consistently made large investments for both ordinary maintenance and capital improvements on the Coos Bay Subdivision, even during the past several years when the Coos Bay Subdivision has operated at a substantial loss. At the time the line was embargoed in September 2007, it consisted of a mix of FRA Class 2 and Class 1 track — an overall condition very similar to that which existed at the time CORP purchased the line from SPT. Until the time of the embargo, CORP likewise performed repairs to the tunnels as necessary to keep the line operational. While as a general rule this tunnel work consisted of relatively minor repairs, CORP did perform more extensive repairs when necessary. In 1998, for example, a fire inside

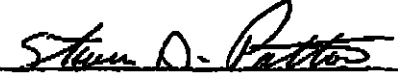
Tunnel 21 near Lakeside, OR required CORP to undertake major structural repair work to that tunnel. CORP hired an outside contractor to perform this major tunnel rehabilitation work. More recently, in 2006, CORP performed major repair work in Tunnel No. 15 in response to an inspection that found unsafe conditions in that tunnel (and the collapse of the tunnel during minor repair work to correct the conditions identified during the inspection)

In conclusion, based upon my first-hand knowledge of the condition of the track and facilities on the Coos Bay Subdivision, I believe that any claim by the Port that CORP has been negligent in maintaining the Coos Bay Subdivision is contrary to the facts.

VERIFICATION

I, Steven Patton, declare under penalty of perjury that the foregoing is true and correct

Further, I certify that I am qualified and authorized to file this verified statement.


Steven Patton

Executed on August 28, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Oregon International Port of Coos Bay – Feeder Line)
Application – Coos Bay Line of the Central Oregon &) Finance Docket No 35160
Pacific Railroad, Inc.)

VERIFIED STATEMENT OF TODD N. CECIL

My name is Todd N Cecil I am Vice President – Real Estate for RailAmerica, Inc. My business address is 1355 Central Parkway South, Suite 700, San Antonio, Texas 78232. I have held my current position with RailAmerica since 2000. Prior to that, I was Director of Real Estate and, later, Vice President – Real Estate of RailTex, Inc., which previously owned the Central Oregon & Pacific Railroad, Inc. (“CORP”) from 1994 - 2000. From 1980 through 1990, I held a variety of positions with both the predecessor companies and the real estate subsidiaries of CSX Transportation, Inc.

I have 25 years of experience in the management, development and marketing of railroad real estate. My experience includes valuation of railroad-owned real estate, and negotiating hundreds of sales, leases, acquisitions and other transactions involving rail properties throughout the United States, Canada and Chile. During my career, I have been involved in numerous railroad corridor valuation and disposition projects. In particular, I have been personally involved in every sale of excess right-of-way land by CORP in the years since it acquired its rail lines from Southern Pacific Transportation Company ("SP"). I earned a BA degree from Bowling Green State University in Geography/Planning in 1977, and a MA degree from Bowling Green State University in Geography (with Land Planning emphasis) in 1980. I am currently licensed as a General State Certified Appraiser in Texas, and was formerly a State Certified Real

Estate Appraiser in Michigan. I am a member of the International Right of Way Association and an Associate Member of the Appraisal Institute

The purpose of this Verified Statement is to respond to Port witness DeVoe's decision to discount the value of the right-of-way land underlying the Coos Bay Subdivision by 50% on account of the reservation of certain ancillary rights by SPT in the deeds that conveyed title to that land to CORP in 1995. *See* Feeder Line Application, Vol. II, V.S. DeVoe ("DeVoe Appraisal") at 9-10, 113, 157, 166, 169, 174, 192, 209, 224, 227, 240. The rights reserved by SPT included timber rights, mineral rights, and a perpetual exclusive easement on that portion of the right-of-way within 50 feet of the center line of the track for possible pipeline or communications (fiber optic) facilities (the "Communications and Pipeline Easement"). In addition, the original deeds from SPT to CORP provided that "No permanent building, structure or fence shall be erected or maintained by Grantee on or over the Communications and Pipeline Easement Property which would obstruct or interfere with any then existing or planned Microwave Facilities or other communications facilities or pipelines of Grantor located on or planned to be located on the Communications and Pipeline Easement Property" (the "No-Build Clause"). *See, e.g.* Feeder Line Application, Vol. III, Addenda Section B, Lane County Quitclaim Deed at 4. According to witness DeVoe, those reservations greatly diminish the utility of CORP's right-of-way to any potential purchaser and, in his judgment, support an across-the-board reduction of 50% of the value of virtually all right-of-way land to which he otherwise assigned any value. As my testimony will show, witness DeVoe's judgment is unsupported by his analysis or by real-world experience.

As an initial matter, witness DeVoe's application of any discount to timbered property in Douglas County based upon the reservation of timber rights in the original deed from SPT to

CORP ignores the fact that CORP subsequently re-acquired those timber rights. Specifically, by a Timber Quitclaim Deed dated March 26, 1998, Union Pacific Railroad Company, SPT's successor, deeded to CORP all of its right, title and interest in and to all timber on the portion of CORP's right-of-way land located in Douglas County, OR. *See* Attachment 1. The price paid by CORP to acquire those rights from UP was \$166,666, or approximately \$167 per acre. The Timber Quitclaim Deed is a matter of public record, and was available to witness DeVoe at the time he performed his appraisal. Thus, witness DeVoe's reduction of the timbered value of right-of-way land in Douglas County on account of timber rights reserved by SPT in the original deed to CORP was clearly in error.

Witness DeVoe's assessment that the mineral rights and Communications and Pipeline Easement (including the No-Build Clause) reserved by SPT render CORP's right-of-way land "undevelopable" is incorrect. SPT has never attempted to exploit any mineral rights, nor has it installed (or granted to a third party the right to install) any pipeline or communications facilities on or along the Coos Bay Subdivision, with the exception of fiber optic lines located at the extreme northern end of the line between Milepost 652 and Milepost 654 in the vicinity of Danbo, OR. Moreover, witness DeVoe apparently assumes that the No-Build Clause prohibits in perpetuity any construction of buildings or structures within 50 feet of the center line. On its face, the No-Build Clause prohibits the construction of permanent buildings or structures within 50 feet of the center line only if such buildings or structures "would obstruct or interfere with any then existing or planned Microwave Facilities or other communications facilities or pipelines [of SPT] located on or planned to be located on" the CORP right-of-way. Thus, for example, because there exist fiber optic lines between Milepost 652 and Milepost 654, a potential purchaser of that portion of the right-of-way cannot build any permanent building or structure

that would “obstruct or interfere with” those existing facilities (e.g., by erecting a building directly on top of the fiber optic lines). However, because there are not – and there have never been – any other “existing” or “planned” SPT pipeline or communications facilities elsewhere on the Coos Bay Subdivision, the rights reserved by SPT do not prohibit development of the right-of-way land within 50 feet of the center line by a prospective purchaser on other portions of the right-of-way. Actual right-of-way land sales by CORP over the years (see pages 6-8 below) confirm that the SPT reservations have never resulted in a discount in the purchase price from what would otherwise have been the “fair market value” of the subject property.

The only quantitative support that witness DeVoe offers for the proposition that the various rights reserved by SPT justify a 50% discount in the value of CORP’s land is his analysis of a single sale by CORP to Swanson Brothers Lumber Company (Swanson”) at Noti, OR. See DeVoe Appraisal at 199, 209. Witness DeVoe compares the price paid by Swanson for 9.48 acres of CORP land adjoining the right-of-way (\$12,658 per acre) with the price reflected in two allegedly comparable sales (\$23,076 per acre and \$25,886, respectively). Without any further analysis of the particular properties involved, or the circumstances surrounding those sales, witness DeVoe simply asserts that the price paid by Swanson for the CORP property (which was subject to the SPT easements) “reflects a discount of roughly 50%, which is consistent with the SPT easement discount have applied in most cases throughout this appraisal.” DeVoe Appraisal at 209.

Witness DeVoe’s claim that the Swanson sale provides support for his across-the-board discount of 50% for all CORP-owned land on account of the rights reserved by SPT is not borne out by the facts. SPT’s reserved rights played no role whatsoever in setting the purchase price for the Swanson sale – indeed, those rights were irrelevant to the purchaser. I was personally

involved in the sale to Swanson, and am familiar with the discussions that resulted in the sale transaction. Prior to the sale, Swanson had for a number of years leased the three parcels involved (which straddle CORP's rail line through Noti – *see* DeVoe Appraisal at 200) from CORP for a lease payment of \$[] per year. The property was used by Swanson to store lumber awaiting transportation. Prior to approaching CORP to express interest in buying the land, Swanson commissioned an appraisal of the property by Charles P. Thompson & Associates, a real estate appraisal firm in Eugene, OR. A copy of the appraisal prepared by Thompson & Associates is set forth in Attachment 2 to my Verified Statement. Based upon its independent appraisal of the property, Thompson & Associates concluded that the property had a market value in the range of [] (based upon comparable sales) to [] (based upon the capitalized value of the lease income to CORP). *See* Attachment 2 at 35. Nevertheless, CORP was able to negotiate a sale price of [] which represented approximately 12 times the annual rental payment. Thus, Swanson agreed to pay more than 150% of the appraised value for this property. That fact alone refutes witness DeVoe's assertion that the price paid by Swanson reflected a 50% discount from fair market value on account of the rights reserved by SPT.

Moreover, the nature of the property involved in the Swanson sale, and the buyer's intended use of the property, make clear that the easements reserved by SPT were unimportant to the buyer and did not influence the purchase price. As the aerial photograph on page 200 of the DeVoe Appraisal makes clear, the subject property is not "timber" land, so the timber rights reserved by SPT in Lane County could not logically be expected to affect the purchase price. Likewise, given the intended use of the property – Swanson had used the land prior to the sale to store forest products, and continues to use it for that purpose today (*see* photographs in

Attachment 2 at 23-25) – neither the easements reserved by SPT for possible future pipeline or communications facilities, nor a potential prohibition on building permanent structures within 50 feet of the center line of CORP's track, would interfere with the buyer's intended use. The SPT reservations were never discussed by the parties during the course of negotiations, and the purchase price was based on the capitalized value of the existing lease, not on the "market value" of the property (with or without the SPT reservations).

As stated above, I have been personally involved in every sale of CORP-owned land over the past 14 years. Based on that experience, I can state unequivocally that the rights reserved by SPT have not materially affected the price that CORP has been able to obtain for right-of-way property that is subject to the SPT reservations. To the contrary, CORP has consistently sold such land at prices at or above "Across-the-fence" value.

For example, in June 2006, CORP sold 0.38 acres along its right-of-way in Reedsport, OR to []. The land was purchased by [] for assemblage with their adjacent property for general storage purposes. Portions of the subject property fell within the area covered by the easements for pipeline and communications facilities, as well as the "No-Build Clause" reserved by SPT. Nevertheless, CORP obtained a purchase price of [] or nearly [] per acre, for this property. See Attachment 3. As my contemporaneous memorandum to RailAmerica management indicates, the sale price was considered the prevailing market value of the property, and did not reflect any discount on account of the rights reserved by SPT. See Attachment 3 at 1.

In March 2004, CORP sold 2.55 acres of land in Cottage Grove, OR (in Lane County) to the Bohemia Foundation. The land was purchased by the Foundation for assemblage with adjacent land for development of the South Lane Cultural Heritage Center. Again, portions of

the subject property fell within the area covered by SPT's easements for pipeline and communications facilities, as well as the "No-Build Clause." CORP obtained a purchase price of [] or [] per acre, for the property. See Attachment 4. As my contemporaneous memorandum to RailAmerica management indicates, the sale price was "consistent with prevailing land values" (see Attachment 4 at 1), and was supported by an independent third-party appraisal (*id.* at 2). Once again, no discount from market value was assigned based on the SPT rights

CORP sold two parcels of land (in separate transactions) along its right-of-way at Veneta, OR to []. One parcel, consisting of 2.13 acres, was sold for [] and the other, a 0.94-acre parcel, was sold for []. Portions of both parcels were subject to the easements for pipeline and communications facilities, and the "No-Build Clause," reserved by SPT. Moreover, both parcels are located within the so-called "Greenway" subzone established by local ordinance in Veneta. Nevertheless, CORP obtained an average price of more than [] per acre for those properties. As my contemporaneous memorandum to RailAmerica management indicates, the sale price in each case was based upon the full prevailing market value of the property, and did not reflect any discount on account of the rights reserved by SPT. See Attachment 5 at 1, 5. More importantly, contrary to witness DeVoe's conclusion (see DeVoe Appraisal at 160-163), the fact that those parcels were subject to Veneta's "Greenway" zoning regulations clearly did not render the property worthless.

Table 1 lists these and other right-of-way land sales that have occurred in the years since CORP acquired the Coos Bay Subdivision from SPT.

Table 1: CORP Land Sales Along Railroad Right-of-Way

Sale date	Location	County	Sale price	Size (acres)	Price/acre
6/22/2006	Reedsport, OR	Douglas		0.38	
9/30/2005	Ashland, OR	Jackson		0.73	
12/27/2004	Veneta, OR	Lane		2.13	
6/18/2004	Central Point, OR	Jackson		0.37	
3/24/2004	Cottage Grove, OR	Lane		2.55	
6/12/2003	Grants Pass, OR	Josephine		1.31	
9/20/2002	Gold Hill, OR	Jackson		3.22	
5/24/2001	Veneta, OR	Lane		0.94	
12/15/2000	Grants Pass, OR	Josephine		1.82	
5/12/2000	Veneta, OR	Lane		3.83	
12/22/1998	Medford, OR	Jackson		2.31	
12/7/1998	Phoenix, OR	Jackson		1.90	
9/29/1998	Grants Pass, OR	Josephine		2.86	
12/16/1996	Roseburg, OR	Douglas		1.05	
12/21/1995	Medford, OR	Jackson		0.49	

As Table 1 demonstrates, CORP has consistently realized market-based prices in selling its excess right-of-way land, notwithstanding the reservation of certain rights in the original deed from SPT to CORP. In no instance was land sold at a 50% discount from ATF value – much less rendered valueless – on account of SPT's reserved rights. CORP's standard purchase contract provides that, after a preliminary sale price is agreed upon, the purchaser has an opportunity to obtain a title report, raise title objections, and to terminate the contract (with a full refund of any deposit) if any title problems that may interfere with the purchaser's intended use of the property are discovered. I cannot recall any transaction in which the SPT rights were discussed more than briefly by the parties, nor am I aware of any sale in which the SPT rights resulted in a reduction in the purchase price

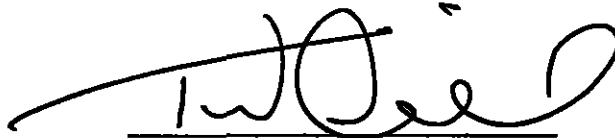
This is not surprising. As witness DeVoe himself recognizes, the Coos Bay Subdivision's right-of-way "does not have reasonable potential for pipeline or communication line uses." See DeVoe Appraisal at 11. In the 14 years since CORP acquired the line, to the best of my knowledge, neither SPT nor its successor UP has expressed any serious interest in granting

an easement for a pipeline along the Coos Bay Subdivision's right-of-way. While there are fiber optic cables installed at the northern end of the Coos Bay Subdivision (between Milepost 652 and Milepost 654), neither SPT (nor its successor UP) has granted such rights elsewhere along the Coos Bay Subdivision. Given the development of wireless technology, it is far less likely today that prospective purchasers view the likelihood of new facilities such as fiber cables being installed as a significant risk, particularly where a parcel is acquired for assemblage with land already owned by the purchaser. In any event, it is clear that witness DeVoe's devaluation of all CORP right-of-way land by 50% on account of the SPT easements is not supported by the data regarding actual sales of such land

VERIFICATION

I, Todd N. Cecil, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this verified statement.

A handwritten signature in black ink, appearing to read 'Todd N. Cecil', written over a horizontal line.

Todd N. Cecil

Executed on August 22, 2008



98-09298

BOOK 1534 PAGE 827

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

RailTex Logistics, Inc.
4040 Broadway, Suite 200
San Antonio, Texas 78209
Attn: Regional General Manager

**Until a change is requested, all tax
statements shall be sent to the following address:**

RailTex Logistics, Inc.
4040 Broadway, Suite 200
San Antonio, Texas 78209
Attn: Regional General Manager

(Space above for Recorder's use only)

**TIMBER QUITCLAIM DEED**

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly known as Southern Pacific Transportation Company), whose address is 1416 Dodge Street, Omaha, Nebraska 68179, Grantor, does hereby REMISE, RELEASE and forever QUITCLAIM unto RAILTEX LOGISTICS, INC., a Delaware corporation, Grantee, whose address is shown above, and unto its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to all timber growing, grown or to be grown on the property situated in Douglas County, State of Oregon, described in Exhibit A attached hereto and hereby made a part hereof (the "Timber Rights"), as reserved by Grantor in that certain Quitclaim Deed dated December 31, 1994, recorded in the Official Records of Douglas County, Oregon on January 3, 1995 in Book 1332, Pages 767 to 805, Instrument No 95-00007.

The true consideration for this quitclaim is One Hundred Sixty-Six Thousand Six Hundred Sixty-Six and No/100 Dollars (\$166,666.00)

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30 930 (ORS 93 040)

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, and all actions for trespass to the timber on the property described in Exhibit A; TO HAVE AND TO HOLD, subject to the aforesaid provisions, the Timber Rights and the actions for trespass unto the said Grantee and unto its successors and assigns

IN WITNESS WHEREOF, Grantor has caused this deed to be duly executed as of the 26 day of March, 1998.

Attest:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

Cynthia F. Meyer (Seal)
Assistant Secretary

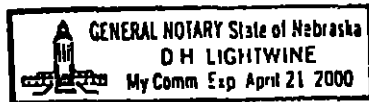
By: [Signature]
Title: Assistant Vice President



STATE OF NEBRASKA)
) ss.
 COUNTY OF DOUGLAS)

On March 24, 1998, before me, a Notary Public in and for said County and State, personally appeared R.D. UHRICH and C.J. MEYER, and Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument

WITNESS my hand and official seal



[Signature]
 Notary Public

(SEAL)

EXHIBIT A

(Attached to and forming a part of the
Quitclaim Deed, Douglas County, Oregon,
dated as of 12:01 p.m., Pacific Standard Time,
December 31, 1994,
from Southern Pacific Transportation Company
to Central Oregon & Pacific Railroad, Inc.)

Land

SISKIYOU LINE AND COOS BAY BRANCH
DOUGLAS COUNTY, OREGON

All lands and property of the Southern Pacific
Transportation Company's Siskiyou Line and Coos Bay Branch
situated in the County of Douglas, State of Oregon:

Siskiyou Line

(Douglas County)

Exhibit "A"

A line of railroad situated in the County of Douglas, State of Oregon, comprised of strips and parcels of land between the Josephine and Douglas County line at M.P. (Mile Post) C-505.41, Engineers Station 4+89 near Glendale, and the Douglas and Lane County line at M.P. C-620.96, Engineers Station 2348+25 near Divide as described in deeds to the Oregon & California Railroad Company, Southern Pacific Railroad Company, Southern Pacific Company or the Southern Pacific Transportation Company, Grantees, and more fully described in deeds recorded in Douglas County records as follows:

<u>Date</u>	<u>Grantor</u>	<u>Date of Recording</u>	<u>Book</u>	<u>Page</u>
08-22-1882	Samuel Marks, et al.	08-29-1882	13	256
03-30-1907	O.C. Sather, et ux.	04-25-1907	57	107
12-18-1907	Oregon Idaho Co.	12-28-1907	57	590
02-28-1883	W.R. Willis, et ux., et al.	03-03-1883	13	597
04-08-1920	Glendale Lumber Co.	06-26-1920	81	154
05-03-1920	City of Glendale	06-26-1920	81	155
10-25-1929	Glendale Lumber Co.	05-19-1930	92	319
06-10-1886	David Loring	06-22-1886	17	576
03-01-1929	Clara J. Worthington	03-14-1929	91	141
06-14-1939	Douglas County	07-12-1939	100	415
02-12-1883	J.B. Nichols, et ux.	02-24-1883	13	584
01-18-1883	W.H. Riddle, et al.	02-09-1883	13	555
03-12-1888	C. Ledgerwood, et ux.	03-17-1888	20	1
06-10-1882	A.M. Beaty	06-12-1882	13	106
03-02-1883	H.H. Nichols	03-06-1883	13	604
01-18-1883	W.H. Riddle, et al.	02-09-1883	13	554
12-16-1881	W.R. Mynatt, et ux.	12-20-1881	12	434
06-10-1882	Daniel Raymond	06-12-1882	13	107
02-12-1883	J.B. Nichols, et ux.	02-24-1883	13	589
12-15-1881	Noah Cornutt, et ux.	12-20-1881	12	428
04-16-1909	Glenbrook Land & Lbr. Co.	10-05-1909	63	238
12-15-1881	Abner Riddle, et ux.	12-20-1881	12	437
12-16-1881	Abner Riddle, et ux.	12-20-1881	12	436

<u>Date</u>	<u>Grantor</u>	<u>Date of Recording</u>	<u>Book</u>	<u>Page</u>
12-05-1889	Abner Riddle, et ux.	12-13-1889	22	266
12-14-1881	J.D. Cornutt, et ux.	12-20-1881	12	429
03-02-1883	J.D. Cornett, et al.	03-06-1883	13	602
10-30-1884	Hans Weaver, et ux.	12-05-1884	16	51
12-13-1881	Hans Weaver, et ux.	12-20-1881	12	440
05-28-1948	City of Riddle	08-28-1948	159	3
12-13-1881	James Adams, et ux.	12-20-1881	12	423
01-29-1883	Rosa Adams	02-09-1883	13	556
12-12-1881	John Hall, et ux.	12-20-1881	12	431
01-02-1882	John Hall, et ux.	01-04-1882	12	472
06-20-1887	Martin Purkeypile, et ux.	06-23-1887	19	12
11-13-1913	Lexington Investment Co.	01-05-1914	73	222
09-16-1899	John Hall, et ux.	09-25-1899	38	471
01-04-1913	S.B. Crouch, et ux	01-13-1913	71	546
11-20-1930	R.M. Baldwin, et ux.	12-22-1930	93	49
11-02-1881	G.H. Stevenson, et ux.	11-04-1881	12	339
04-25-1872	M.C. Ruckles, et ux.	05-16-1872	5	556
11-23-1881	M.C. Ruckles, et ux.	11-29-1881	12	384
09-25-1907	Lydia Dascomb	10-02-1907	57	435
06-18-1907	W.N. Moore, et ux.	06-29-1907	57	261
02-28-1882	M.C. Ruckles, et ux.	03-02-1882	12	550
07-28-1882	M.C. Ruckles, et ux.	07-31-1882	13	183
05-03-1912	W.N. Moore, et ux.	05-24-1912	70	549
12-28-1906	G.H. Stevenson, et ux.	01-07-1907	55	464
04-23-1872	William Slocum	05-03-1872	5	546
01-25-1883	Susan Smith, et vir.	02-09-1883	13	557
04-17-1872	William Hudson, et ux.	04-17-1872	5	543
08-18-1888	Jas. D. Burnett, et al.	08-22-1888	20	283
11-25-1911	J.F. Rose, et ux.	12-04-1911	68	561
11-02-1881	Robt. Phipps, et ux.	11-04-1881	12	338
04-22-1872	Wm. Sebsing, et ux.	05-04-1872	5	552
04-22-1872	John Dillard, et ux.	05-03-1872	5	548
11-30-1881	John Dillard, et ux.	12-01-1881	12	393
01-12-1883	John Dillard, et ux.	01-20-1883	13	497
01-13-1883	Robt. Phipps, et ux.	01-20-1883	13	498
11-02-1881	Robt. Phipps, et ux.	11-04-1881	12	337
04-09-1872	A. Miller, et ux.	05-04-1872	5	550
04-22-1872	James J. Rosnagle	05-03-1872	5	545
04-24-1872	Stephen Marsh, et ux.	05-04-1872	5	549
11-30-1881	Sarah J. Kelly	12-01-1881	12	392
03-27-1872	J. Green, et ux.	05-15-1872	5	562
11-02-1881	J. Green, et ux.	11-04-1881	12	336
12-03-1881	Jeptha Green, et ux.	12-05-1881	12	399
10-14-1994	State of Oregon		1322	514
03-27-1872	James Boggs, et ux.	04-17-1872	5	542
10-31-1881	James Boggs, et ux.	11-01-1881	12	334
11-02-1881	J. Green, et ux.	11-04-1881	12	336

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12-03-1881	J. Green, et ux.	12-05-1881	12	398
05-25-1872	Jos. J. Sheffield	05-16-1872	5	555
02-28-1872	Thos. P. Sheridan	04-17-1872	5	537
12-13-1881	Edward F. Sheridan	12-13-1881	12	417
03-02-1872	M. Parrott, et ux.	04-17-1872	5	541
06-18-1940	The Cal. Ore. Power Co.	08-13-1940	101	568
11-08-1940	Gen. Petroleum Corp. of Cal.	12-13-1940	102	158
02-28-1872	Aaron Rose, et ux.	04-17-1872	5	538
01-29-1873	Aaron Rose, et ux.	01-30-1873	6	108
06-09-1923	County of Douglas	07-28-1923	85	95
02-16-1924	W.S. Hamilton, et al.	03-28-1924	85	582
10-14-1926	William M. Allen, et ux.	10-28-1926	88	493
01-29-1873	Aaron Rose, et ux.	01-0-1873	6	108
02-06-1907	S. Hamilton, et al.	02-18-1907	55	570
06-09-1883	Aaron Rose, et ux.	06-14-1883	14	260
08-13-1898	Aaron Rose, et ux.	04-06-1899	38	137
06-09-1883	Aaron Rose, et ux.	06-14-1883	14	262
03-16-1878	Aaron Rose, et ux.	03-19-1878	9	590
08-18-1898	Julie B. Comstock	04-06-1899	38	136
01-26-1907	J.G. Flook Co.	02-06-1907	55	547
02-29-1872	J.C. Flood, et al.	04-24-1872	5	548
04-27-1872	G. Mehl, et ux.	05-16-1872	5	564
02-28-1872	N. Cockelreas, et ux.	04-17-1872	5	540
06-13-1872	Joseph Williams, et ux.	06-27-1872	5	589
04-13-1901	Levi Mickler, et ux.	04-18-1901	42	227
02-28-1872	C. Gaddis, et ux.	04-22-1872	5	539
04-26-1872	John Aiken, et ux.	05-16-1872	5	561
06-04-1875	John Jones, et ux.	06-04-1875	7	308
04-26-1872	John C. Aiken, et ux.	05-16-1872	5	560
02-27-1872	Hiram Dixon, et ux.	04-17-1872	5	536
02-06-1907	S. Hamilton, et al.	02-18-1907	55	570
02-19-1921	A. Creason, et ux.	03-10-1921	82	35
12-05-1923	Joseph Micelli, et ux.	01-10-1924	85	424
02-16-1924	W.S. Hamilton, et al.	03-28-1924	85	582
03-25-1932	Foster Butner, et ux.	05-11-1932	94	211
10-05-1936	City of Roseburg	01-23-1937	98	186
12-04-1936	Halsey DeCamp, et ux.	01-23-1937	98	186
02-04-1965	U.S. Plywood Corp.	10-17-1966	380	778
07-27-1970	City of Roseburg	08-12-1970	451	211
07-27-1970	City of Roseburg	08-12-1970	451	213
07-13-1970	Roseburg Lumber Co.	08-12-1970	451	216
07-27-1970	King Subdiver, Inc.	08-12-1970	451	220
02-27-1872	Hiram Dixon, et ux.	04-17-1872	5	538
04-26-1872	John C. Aiken, et ux.	05-16-1872	5	560
04-26-1872	John Aiken, et ux.	05-16-1872	5	561
06-30-1911	Alan S. Dumbleton, et ux	07-10-1911	68	115
04-26-1872	Thomas Smith, et ux.	05-16-1872	5	557

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10-01-1881	Fendel Sutherlin, et ux.	01-24-1882	12	497
11-14-1922	Samuel A. Kendall, et al	12-08-1922	84	199
06-07-1882	Thos. F. Royal, et ux.	01-28-1884	15	121
07-29-1876	Ziba Dimmick, et ux.	08-22-1876	7	773
11-06-1876	Joseph A. Haines, et ux.	11-29-1876	8	166
06-03-1872	J.D.B. Lee, et ux.	06-27-1872	5	588
03-25-1873	J.D.B. Lee, et ux.	04-21-1873	6	216
02-16-1872	A.J. Chapman, et ux.	03-12-1872	5	530
04-15-1873	A.J. Chapman, et ux.	04-21-1873	6	218
08-10-1910	M.E. Wilson	08-27-1910	66	300
02-16-1872	B.J. Grubbe, et ux.	12-24-1881	12	459
04-20-1872	D.H. McBride, et ux.	05-04-1872	5	551
02-16-1872	E.T. Grubbe, et ux.	03-12-1872	5	532
02-21-1872	Jas. T. Cooper, et ux.	03-12-1872	5	531
06-06-1907	Phoenix Stone Co.	06-21-1907	57	239
07-23-1918	George W. Short, et al.	08-28-1918	79	64
06-05-1918	Alice Walker, et vir.	06-24-1918	5	352
02-21-1872	James T. Cooper, et ux.	03-12-1872	5	531
04-27-1872	John C. Smith, et ux.	05-16-1872	5	563
02-16-1916	J.F. Luse Co.	Cert. of Title	4	602
12-29-1909	Sutherlin Lane & Water Co.	01-17-1910	64	118
07-11-1913	J.F. Luse Co.	Cert. of Title	3	161
04-22-1915	J.F. Luse, et al.	Cert. of Title	4	331
03-18-1876	Mary V. Johnson	03-31-1876	7	623
01-29-1878	E.C. Lord	02-01-1878	9	440
03-10-1949	Weyerhaeuser Timber Co.	04-26-1949	167	140
02-14-1872	Reason Reed, et ux.	03-12-1872	5	528
03-19-1897	D.W. Stearns, et ux.	03-30-1897	35	313
04-27-1872	D.W. Stearns, et ux.	05-16-1872	5	558
02-14-1872	A.F. Brown, et ux.	03-12-1872	5	527
04-01-1904	A.F. Stearns, et ux.	04-13-1904	49	81
04-01-1904	A.F. Stearns, et al.	04-14-1904	49	81
09-10-1872	A.F. Brown, et ux.	10-31-1872	9	87
06-10-1903	A.F. Brown, et ux.	06-16-1903	47	268
12-01-1903	L.P. Sutherlin, et al.	01-25-1904	47	579
10-28-1903	A.F. Brown, et al.	11-23-1903	47	484
10-14-1896	Emanuel Hartsock, et ux.	10-21-1896	35	31
09-23-1871	Edward G. Young, et ux.	10-13-1871	5	517
09-26-1871	D.B. Hamblin, et ux.	10-12-1871	5	509
09-23-1871	M.R. Shupe	10-12-1871	5	513
09-23-1871	Joseph A. Dallon	10-12-1871	5	514
09-28-1871	D.C. Underwood, et ux.	11-04-1871	5	521
03-18-1876	John F. Sutherlin	03-24-1876	7	615
02-23-1869	W.L. Tower, et ux.	02-21-1908	59	52
06-15-1891	W.L. Tower, et ux.	06-23-1891	24	563

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07-17-1899	Isadore E. Rice, et ux.	07-28-1899	38	372
06-15-1891	Isadore E. Rice, et ux.	06-23-1891	24	562
09-22-1871	Ica F. Rice, et ux.	10-13-1871	5	518
04-27-1878	J.L. McKinney, et ux.	05-03-1878	9	723
11-01-1875	Martha Ann Smith	11-06-1875	7	495
09-06-1875	Robert Smith, et ux.	09-10-1875	7	426
12-18-1917	Horace Campbell, et ux.	01-10-1918	78	311
08-12-1919	Horace Campbell, et ux.	09-10-1919	80	65
04-26-1923	Rebecca G. Campbell	06-11-1923	84	618
07-21-1871	John Long, et ux.	10-12-1871	5	516
09-14-1910	R.W. Long, et ux.	10-17-1910	66	461
09-15-1910	S.G. Long, et ux.	10-17-1910	66	461
09-21-1871	William H. Wilson, et ux.	10-13-1871	5	519
01-30-1872	A.T. Ambrose, et ux.	03-12-1872	5	524
02-03-1913	John H. Sutherlin, et ux.	02-27-1913	72	26
11-17-1909	William Long	12-06-1909	63	452
09-27-1871	George A. Burt	10-12-1871	5	512
11-29-1875	Willamette Real Estate Co.	01-11-1876	7	549
08-14-1875	Chas Applegate, et ux.	08-19-1875	7	409
———1871	D.W. Applegate, et ux.	10-11-1871	5	503
10-07-1871	P.O. Applegate	11-16-1871	5	523
09-20-1871	W.H. Applegate	10-16-1871	5	504
09-20-1871	C. Drain, et al.	10-16-1871	5	507
09-30-1871	Conrad Snowden, et ux.	11-04-1871	5	520
09-25-1871	J. Applegate, et ux.	10-11-1871	5	502
03-15-1906	Skelley Lumber Co.	04-13-1906	51	623
11-27-1905	R. Becker, et ux.	12-16-1905	51	410
10-06-1905	Benton Mires	10-20-1905	51	305
11-27-1905	C. Arlandson, et ux.	12-16-1905	51	408
10-18-1905	Joseph Lyons, et ux.	11-16-1905	51	354
10-13-1905	C.D. Drain, et ux.	10-23-1905	51	312
09-29-1905	A.L. Moon, et ux.	10-20-1905	51	305
04-19-1876	J.G. Hughes	———	7	686
07-10-1899	J. Lyons, et ux.	07-17-1899	38	354
02-12-1872	J.W. Krewson, et ux.	03-12-1872	5	526
10-04-1871	C. Putnam	11-16-1871	5	522
06-07-1872	N.E. Mulvaney	01-28-1884	15	120
09-23-1871	E.A. Estes	10-11-1871	15	505
09-21-1871	E.T. Estes, et ux.	10-11-1871	15	506
09-26-1871	J.J. Comstock, et ux.	10-11-1871	15	501
———1871	William Ward, et ux.	10-11-1871	5	508
11-27-1906	J.A. Griggs, et ux.	12-15-1906	55	398
11-27-1906	F. Marketta	12-15-1906	55	399

Together with the 200 foot wide Congressional Grant right of way, acquired by the Oregon and California Railroad Company (predecessor of the Southern Pacific Transportation Company) by Act of Congress dated July 25, 1866, lying 100 feet on each side of the original surveyed line described as follows:

(1) Beginning at the point of intersection of the Josephine and Douglas County line in the west half of the southwest quarter of Section 10, Township 33 South, Range 6 west, W.B. & M., with said surveyed line at or near Engineers Station 4+89; thence northwesterly, along said surveyed line, to a point in the north line of the southeast quarter of Section 4 said Township and Range at or near Engineers Station 77+70.

(2) Beginning at the point of intersection of the east line of the southwest quarter of the northeast quarter of Section 4, Township 33 South, Range 6 west, W.B. & M., with said surveyed line at or near Engineers Station 84+50; thence northwesterly, along said surveyed line, to a point in the north line of the northwest quarter of the southwest quarter of Section 32, Township 32, South, Range 6 west, W.B. & M., at or near Engineers Station 188+10.

Excepting the portion within the southeast quarter of the southeast quarter of said Section 32.

(3) Beginning at the point of intersection of the east line of the northwest quarter of the northeast quarter of Section 31, Township 32 South, Range 6 West, W.B. & M., with said surveyed line at or near Engineers Station 3334+30; thence westerly, along said surveyed line, to a point in a line in the northwest quarter of the southeast quarter of Section 19, Township 32 South, Range 7 West, W.B. & M., having a bearing of South 45° East and passing through a point distant 350 East of the center of said Section 19, at or near Engineers Station 2892+70;

Excepting the portion within the southeast quarter of the southeast quarter of Section 36, Township 32 South, Range 7 West, W.B. & M.

(4) Beginning at the point of intersection of the center line of Cow Creek in the southeast quarter of the southwest quarter of Section 1, Township 32 South, Range 8 West, W.B. & M., with said surveyed line at or near Engineers Station 2717+50; thence northeasterly, along said surveyed line, to a point in the east line of the northeast quarter of the southeast quarter of Section 35, Township 30 South, Range 7 West, W.B. & M., at or near Engineers Station 1900+30.

(5) Beginning at the point of intersection of the north line of the north half of the northwest quarter of Section 1 Township 31 South, Range 7 West, W.B. & M., with said surveyed line at or near Engineers Station 1875+00; thence easterly, along said surveyed line, to a point in said north line at or near Engineers Station 1868+90.

(6) Beginning at the point of intersection of the west line of the southwest quarter of the southwest quarter of Section 31, Township 30 South, Range 6 West, W.B. & M., with said surveyed line at or near Engineers Station 1809+12; thence northeasterly, along said surveyed line, to a point in the north line of Lot 1, in the northwest quarter of Section 32, said Township and Range at or near Engineers Station 1725+50.

(7) Beginning at the point of intersection of the south line of Lot 1 in the northeast quarter of Section 12, Township 30 South, Range 6 West, W.B. & M., with said surveyed line at or near Engineers Station 1379+50; thence northeasterly, along said surveyed line, to a point in the east line of the northeast quarter of the southeast of Section 1, said Township and Range at or near Engineers Station 1345+40.

(8) Beginning at the point of intersection of the south line of Lot 1 in the northeast quarter of Section 32, Township 29 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 1211+80; thence northeasterly, along said

surveyed line, to a point in the east line of said Lot 1 at or near Engineers Station 1204+80. .

(9) Beginning at the point of intersection of the south line of Lot 6 in the southwest quarter of Section 28, Township 29 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 1180+40; thence northeasterly, along said surveyed line, to a point in the east line of Lot 5 in said southwest quarter at or near Engineers Station 1164+60.

(10) Beginning at the point of intersection of the east line of Lot 1 in the northeast quarter of Section 28, Township 29 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 1141+33; thence northwesterly, along said surveyed line, to a point in the north line of lot 1 in the northeast quarter of Section 19, said Township and Range at or near Engineers Station 1027+25.

(11) Beginning at the point of intersection of the west line of Lot 6 in the southeast quarter of Section 18, Township 29 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 1000+90; thence northerly, along said surveyed line, to a point in the north line of Lot 5 in the northeast quarter of Section 18, said Township and Range at or near Engineers Station 973+20.

(12) Beginning at the point of intersection of the south line of the fractional northeast quarter of the northeast quarter of Section 2, Township 29 South, Range 6 West, W.B. & M., with said surveyed line at or near Engineers Station 814+30, thence northerly, along said surveyed line, to a point in the north line of fractional southeast quarter of the southeast quarter of Section 35, Township 28 South, Range 6 West, W.B. & M. at or near Engineers Station 788+40.

(13) Beginning at the point of intersection of the east line of the southeast quarter of the southeast quarter of Section 34, Township 28 South, Range 6 West, W.B.

& M., with said surveyed line at or near Engineers Station 713+00; thence westerly, along said surveyed line, to a point in the west line of Lot 1 in the northwest quarter of Section 3, Township 29 South, Range 6 West, W.B. & M. at or near Engineers Station 672+40.

(14) Beginning at the point of intersection of the west line of the northeast quarter of Section 27, Township 28 South, Range 6 West, W.B. & M., with said surveyed line at or near Engineers Station 445+85; thence northeasterly, along said surveyed line, to a point in the north line of said northeast quarter at or near Engineers Station 429+35.

(15) Beginning at the point of intersection of the east line of Lot 20 in the northwest quarter of Section 25, Township 26 South, Range 6 West, W.B. & M., with said surveyed line at or near Engineers Station 999+30 thence northerly, along said surveyed line, to a point in the south line of the James E. Walton Donation Land Claim 46 in the southwest quarter of Section 24, said Township and Range at or near Engineers Station 967+80.

(16) Beginning at the point of intersection of the south line of the southwest of the quarter of the northeast quarter of Section 17, Township 25 South, Range 5, West, W.B. & M., with said surveyed line at or near Engineers Station 555 + 55; thence northerly, along said surveyed line, to a point in the north line of the said southwest quarter of the northeast quarter at or near Engineers Station 541+80.

(17) Beginning at the point of intersection of the south line of Lot 3 in the northeast quarter of Section 8, Township 25 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 502+70; thence northerly, along said surveyed line, to a point in the north line of said Lot 3 at or near Engineers Station 496+86.

(18) Beginning at the point of intersection of the east line of the southeast quarter of the northwest quarter of Section 32, Township 24 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 349+10; thence northwesterly,

along said surveyed line, to a point in the west line of Lot 5 in the southwest quarter of Section 29, said Township and Range at or near Engineers Station 325+80.

(19) Beginning at the point of intersection of the north line of the northeast quarter of the southeast quarter of Section 32, Township 23 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 3+18; thence northwesterly, along said surveyed line, to a point in the south line of Richard Smith Donation Land Claim No. 47 in the northwest quarter of Section 33 said Township and Range at or near Engineers Station 28+00.

(20) Beginning at the point of intersection of the south line of Lot 4 in the southwest quarter of Section 27, Township 23 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 80+80; thence northerly, along said center line, to a point in the north line of said Lot 4 at or near Engineers Station 90+50.

(21) Beginning at the point of intersection of the west line of Lot 3 in the southwest quarter of Section 27, Township 23 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 105+10; thence northerly, along said surveyed line, to a point in the north line of the northwest quarter of the northwest quarter of said Section 29 at or near Engineers Station 134+30.

(22) Beginning at the point of intersection of the north line of the Warren N. Goodells Donation Claim No. 40 in the southeast quarter of Section 8, Township 22 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 2964+35; thence northeasterly, along said surveyed line, to a point in the north line of said southeast quarter at or near Engineers Station 2953+70.

(23) Beginning at the point of intersection of the west line of the northeast quarter of the northwest quarter of quarter of Section 9, Township 22 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 2923+20; thence

northeasterly, along said surveyed line, to a point in the north line of said northeast quarter of the northwest quarter at or near Engineers Station 2916+28.

(24) Beginning at the point of intersection of the west line of the southwest quarter of the northeast quarter of Section 4, Township 22 South, Range 5 West, W.B. & M., with said surveyed line at or near Engineers Station 2886+40; thence northeasterly, along said surveyed line, to a point in the north line of the southwest quarter of the southwest quarter of Section 34, Township 21 South, Range 5 West at or near Engineers Station 2834+20.

(25) Beginning at the point of intersection of the west line of the northwest quarter of the northwest quarter of Section 31, Township 21 South, Range 4 West, W.B. & M., with said surveyed line at or near Engineers Station 2676+26; thence northeasterly, along said surveyed line, to a point in the east line of the northeast quarter of the southwest quarter of Section 30, said Township and Range, at or near Engineers Station 2636+32.

(26) Beginning at the point of intersection of the east line of the northeast quarter of the northeast quarter of Section 30, Township 21 South, Range 4 West, W.B. & M., with said surveyed line at or near Engineers Station 2609+70; thence northeasterly, along said surveyed line, to a point in the north line of Lot 2 in the southeast quarter of Section 19, said Township and Range, at or near Engineers Station 2595+57.

(27) Beginning at the point of intersection of the south line of the southwest quarter of the southeast quarter of Section 9, Township 21 South, Range 4 West, W.B. & M., with said surveyed line at or near Engineers Station 2458+40; thence easterly, along said surveyed line, to a point in the east line of the southwest quarter of Section 11 said Township and Range, that is also the Douglas and Lane County line at or near Engineers Station 2346+25.

(28) A portion of Lot 3 in the southwest quarter of Section 31, Township 25 South, Range 5 West, W.B. & M., that is bounded westerly by a line concentric with and distant 100 feet westerly, measured radially, from said original surveyed line and bounded easterly by the east line of said Lot 3.

Together with the 200 foot wide Congressional Grant right of way, acquired by the Oregon & California Railroad Company (predecessor of the Southern Pacific Transportation Company) by Act of Congress dated March 3, 1875, lying 100 feet on each side of the original surveyed line described as follows:

Beginning at the point intersection of a line in the northwest quarter of the southeast quarter of Section 19, Township 32, South, Range 7 West, W.B. & M., having a bearing of South 45° East and passing through a point distant 350 feet east of the center of said Section 19, with said surveyed line at or near Engineers Station 2892+70; thence northwesterly, along said surveyed line, to a point in the center line of Cow Creek in the southeast quarter of the southwest quarter of Section 1, Township 32 South, Range 8 West, W.B. & M., at or near Engineers Station 2717+50.

Together with the strips or parcels of land described as follows:

(1) A strip of land, 100 feet in width, lying 50 feet on each side of the center line of the main track of the Southern Pacific Transportation Company, extending northwesterly from the point of intersection of said center line with the north line of the northwest quarter of the southwest quarter of Section 32, Township 32 South, Range 6 West, W.B. & M., at or near Engineers Station 188+10, to the west line of the northeast quarter of the northeast quarter of Section 31, said Township and Range, at or near Engineers Station 3334+30.

(2) A portion of Sheridan Street in the City of Roseburg described in Vacation dated November 13, 1911, Ordinance No. 328, being a strip of land approximately 450

feet in length and 12 feet in width, lying contiguous to and southeasterly of the southeasterly line of land described in deed dated January 29, 1873, from Aaron Rose, et ux., to the Oregon and California Railroad Company, recorded January 30, 1873, in Book 6 of Deeds, page 108, records of said County and extending southwesterly approximately 450 feet from the southwesterly line of Oak Street (60 feet wide).

(3) A strip of land, 50 feet in width, situated in the City of Roseburg, lying 25 feet on each side of the center line of the track shown on print of "Proposed Spur to Kinney's Addition," made a part of Indenture dated May 23, 1903, from Clara Rast, et al., to the Southern Pacific Company, said center line more particularly described as follows:

Beginning at the point of intersection of said center line with the westerly line of Winchester Street (60 feet wide); thence southwesterly, along said center line, to a point in the easterly line of the main line right of way (60 feet wide) of the Southern Pacific Transportation Company.

(4) A strip of land, 30 feet in width, being a portion of the land described in deed dated June 6, 1907, from the Phoenix Stone Company to the Oregon and California Railroad Company, recorded June 21, 1907, in Book 57 of Deeds, page 239, records of said County, lying 15 feet on each side of the center line described as follows:

Beginning at the junction of the center line of the originally located spur track leading to the Phoenix Stone Company's stone quarry with the center line of the main track of the Southern Pacific Transportation Company at Engineers Station 708+74; thence southeasterly, along the center line of said spur track, a distance of 428 feet, to a point in the northwesterly terminus of the land described in deed dated September 24, 1931, from the Southern Pacific Company to Elmer J. Crawford, et ux., at or near Engineers Station 4+28.

Excepting therefrom the 60 foot wide main line right of way of the Southern Pacific Transportation Company.

(5) A strip of land, 60 feet in width, lying 30 feet on each side of the center line of the main track of the Southern Pacific Transportation Company, extending northerly from the westerly line of Lot 3 in Block 13 in the town of Wilbur to the north line of Section 18, Township 26 South, Range 5 West, W.B. & M.

Excepting therefrom the portion included in Lots 3 and 4 in Block 2 and the portion in Blocks 3 and 4 in said town of Wilbur.

(6) A triangular parcel of land in the City of Sutherlin, being a portion of the southwest quarter of the southeast quarter of Section 17, Township 25 South, Range 5 West, W.B. & M., bounded westerly by the north-south center line of said Section, bounded north by the north line of said southwest quarter of the southeast quarter and bounded southeasterly by a line parallel with and distant 30 feet southeasterly, measured at right angles, from the center line of main track of the Southern Pacific Transportation Company.

(7) A portion of the Richard Smith Donation Claim No. 47 in the south half of the north half of Section 33, Township 23 South, Range 5 West, W.B. & M., bounded southerly by the south line of said Claim No. 47 and bounded northerly by a line concentric with and distant 30 feet northerly, measured radially, from the center line of the main track of the Southern Pacific Transportation Company near railroad station of Rice Hill.

(8) The portions of Drain Avenue, Beach Street, County Road and alleys in Blocks 20 and 21 in South Drain, vacated by Ordinance 243, dated June 5, 1916, abutting upon the lands of the Southern Pacific Transportation Company.

Excepting from the above described land all of the land described in deeds to various grantees as recorded in records of Douglas County as follows:

<u>Date</u>	<u>Grantor</u>	<u>Date of Recording</u>	<u>Book</u>	<u>Page</u>
12-21-1915	County of Douglas	04-08-1916	75	56
10-06-1950	City of Myrtle Creek	01-25-1951	188	681
12-31-1906	W.N. Moore	06-19-1907	57	234
10-20-1949	Paul B. Hult, et ux.	04-15-1950	178	247
09-10-1942	Coos Bay Lumber Co.	10-27-42	104	437
06-25-1979	Southern Pacific Co.	07-24-1979	79-11724	
09-24-1931	Elmer J. Crawford, et ux.	02-08-1932	94	63
04-03-1933	State of Oregon	07-22-1933	95	113
07-25-1918	Benton Mires	09-09-1918	79	77
06-14-1960	E.G. Whipple	06-29-1960	295	136
08-29-1978	Lucille Land	10-16-1978	78-19587	

Also excepting therefrom the strips or parcels of land described as follows:

(1) That portion of the land described in deed dated June 10, 1886, from David Loring to the Oregon and California Railroad Company, recorded June 22, 1886, in Book 17 of Deeds, page 576, records of said County, lying southerly of a line parallel and concentric with and distant 100 feet southerly, measured at right angles and radially, from the center line of the main track of the Southern Pacific Transportation Company.

(2) A parcel of land situated in the City of Riddle, being a portion of the land described in deed dated December 16, 1881, from Abner Riddle to the Oregon and

California Railroad Company, recorded December 20, 1881, in Book 12 of Deeds, page 436, records of said County, lying southeasterly of the following described line:

Beginning at the most easterly corner of the above described parcel of land; thence North 53° 55' West, along the northeasterly line of land described in said deed 5.08 feet; thence South 40° 16' West 571.65 feet; thence South 39° 01' 32" West 62.65 feet; thence South 36° 05' West 767.31 feet to a point in the southwesterly line of land described in said deed.

(3) A parcel of land situated in the City of Dillard, being that portion of the Station Grounds of the Southern Pacific Transportation Company, bounded northerly and southerly by the limits of said Station Grounds, bounded easterly by the easterly line of Pacific Highway and bounded westerly by the easterly line of Main Street (100 feet wide) and its southerly prolongation.

(4) Two parcels of land in the City of Roseburg described as follows:

(a) A parcel of land bounded southerly by Lane Street, bounded northwesterly by Bowen Street, bounded northerly by the southerly line of the land described in deed dated June 25, 1979, to the Southern Pacific Company, recorded July 24, 1979, as Document No. 79-11724, records of said County, and bounded southeasterly by a line parallel with and distant 67 feet northwesterly, measured at right angles, from the centerline of the main track of the Southern Pacific Transportation Company.

(b) A parcel of land described in deed dated March 20, 1947, from the Southern Pacific Company to F.S. Hamilton described therein as follows:

"A piece or parcel of land situate, lying and being in the southeast quarter of Section 24, Township 27 South, Range 6 West, W.B. & M., and being a portion of the parcel of land

described in deed dated June 9, 1883 from Aaron Rose et ux to Oregon and California Railroad Company, recorded June 14, 1883 in Book 14 of Deeds, page 260, Records of Douglas County, in the City of Roseburg, County of Douglas, State of Oregon, described as follows:

Beginning at the point of intersection of the easterly line of said parcel described in said deed with the center line of Burke Street of said City, distant North 62° 00' West, 162.6 feet, measured along said center line from its intersection with the center line of Short Street and 60 feet easterly, measured radially, from the original located center line of main track of the Southern Pacific Company; thence Southerly, along said easterly line of said parcel of land, along a curve to the left, having a radius of 895.04 feet (chord bears South 10° 24' 17" West, 71.5 feet) an arc distance of 71.52 feet to the southeasterly corner of said parcel of land described in said deed; thence North 81° 39' 17" West, along the southerly line of said parcel of land, 17.0 feet to a point; thence Northerly, along a curve to the right having a radius of 436.69 feet (chord bears North 10° 38' East, 77.4 feet), an arc distance of 77.5 feet to a point in the northwesterly prolongation of said center line of Burke Street; thence South 62° 00' East, along said prolongation, 17.5 feet to the point of beginning, containing an area of 1308 square feet, more or less."

**Coos Bay Branch
Douglas County**

Exhibit "A"

A line of railroad, comprised of strips and parcels of land lying between the common boundary of Lane and Douglas Counties at M.P. (Mile Point) 727.045, Engineers Station 1248+81.2 and the common boundary of Douglas and Coos Counties at M.P. 749.085, Engineers Station 2966+94.14, situated in Douglas County, State of Oregon, more fully described in the following instruments (Deed, etc.) to the Willamette Pacific Railroad Company and the Southern Pacific Company:

<u>Date</u>	<u>Grantor</u>	<u>Date of Recording</u>	<u>Book</u>	<u>Page</u>
04-06-1912	Sylvester J. Cox	04-29-1912	70	463
10-04-1913	J.A. Janelle, et ux	10-17-1913	73	21
04-09-1912	E.Z. Brewster, et al	04-27-1912	70	462
10-22-1913	William Kroll, et ux	11-01-1913	73	60
12-19-1911	Gardiner Mill Company	12-22-1911	70	52
12-15-1911	Gardiner Mill Company	12-18-1911	70	41
12-02-1912	Gardiner Mill Company	01-28-1913	71	589
06-18-1915	Menasha Wooden Ware Co.	07-17-1915	75	176
12-14-1912	Gardiner Mill Company	01-28-1913	71	591
12-16-1911	John W. Wroe, et ux	01-11-1912	70	127
11-21-1911	Frank Perry, et ux	12-08-1911	68	578
11-22-1911	William Dewar, et ux	12-18-1911	70	41
12-19-1911	W.P. Reed, et ux	01-11-1912	70	128
12-18-1911	Gardiner Mill Company	12-22-1911	70	54
09-11-1914	Gardiner Mill Company	09-25-1914	74	169
11-22-1911	Asa Henderson, et ux	12-18-1911	70	40
09-20-1913	Asa Henderson, et ux	04-13-1914	73	479
10-30-1911	Gardiner Mill Company	11-03-1911	68	483
06-05-1914	Gardiner Mill Company	07-06-1914	74	11
02-06-1917	Reedsport Company	05-16-1917	77	118

<u>Date</u>	<u>Grantor</u>	<u>Date of Recording</u>	<u>Book</u>	<u>Page</u>
02-07-1917	W.P. Reed, et ux	03-16-1917	77	
02-07-1917	W.P. Reed, et ux	03-16-1917	77	117
09-07-1926	Umpqua Mills and Timber Company	10-28-1926	88	494
11-21-1911	Arthur Walker, et ux	12-05-1911	68	566
09-20-1913	Arthur Walker, et ux	01-12-1914	73	239
01-26-1912	J.D. Tharp, et ux	02-21-1912	70	269
11-04-1914	Southern Pacific Company	11-18-1914	74	300
09-20-1913	A. Walker, et ux	01-12-1914	73	239
03-25-1912	Gardiner Mill Company	04-08-1912	70	392
05-23-1912	P. Dolan, et ux	06-13-1912	70	609
05-21-1913	J.E. Smith, et ux	06-07-1913	72	377
08-19-1913	P. Dolan, et ux	09-10-1913	72	379
09-10-1912	Simpson Lumber Company	11-04-1912	71	331
07-11-1914	Simpson Lumber Company	10-22-1914	74	240
01-10-1912	R.C. McDonald, et vir	03-14-1912	70	322
07-11-1914	R.C. McDonald	08-17-1914	74	95
07-25-1912	A. Anderson, et ux	08-06-1912	71	121
07-13-1914	A. Anderson, et ux	08-17-1914	74	96
04-26-1917	W.P. Reed, et ux	09-15-1917	77	516

ALSO, those parcels of land described in an Order of the circuit court of the State of Oregon for the county of Douglas, June 28, 1916, Willamette Pacific Railroad Company, Plaintiff vs. Henry Wade, et al, Defendants, described therein as follows:

" A strip of land One Hundred and Fifty (150) feet wide, lying equally seventy-five (75) feet on each side of the located center line of the Willamette Pacific Railroad Company's Railroad, heretofore duly adopted by the Board of Directors of the said plaintiff Railroad Company where the same is located over and across the lands of the defendants, and marked by stakes set in the ground at distances of fifty (50) feet and less; said strip of land being a portion of the Southwest quarter of the Southwest quarter of Section eleven and the Northwest quarter of the Northwest quarter of Section fourteen, Township Twenty-One South, Range Twelve West, Willamette Base and Meridian (S.W. 1/4 of S.W. 1/2 of Sec. 11 and NW1/4 of NW1/4 of Sec. 14 T. 21 S.R. 12 W. W.B. & M.) Douglas County Oregon; said located center line being particularly described as follows:

Commencing at a point where the said located center line intersects the West line of said Section Eleven (Sec. 11), said point being known as Engineer Survey Station "D" 2257 plus 42.0 a point on tapering curve to the right; said point being distant Three Hundred and ninety (390) feet, more or less, measured Northerly along said West line from the Southwest corner of said Section Eleven (Sec. 11); running thence from said point of commencement, Southeasterly along said tapering curve to the right, said curve having radii of varying and increasing lengths, a distance of Two Hundred and Eighty-Four and eight-tenths (284.8) feet to a point known as Engineer Survey Station "D" 2260 plus 26.8, end of curve; thence Southeasterly along a line tangent to said last mentioned tapering curve a distance of Eight Hundred and eighty-nine and seven-tenths (889.7) feet to a point known as Engineer Survey Station "D" 2269 plus 16.5, the beginning of a tapering curve to the left; thence Southeasterly along said tapering curve to the left, said curve having radii of varying and decreasing lengths, a distance of Three Hundred and Thirty (330) feet to a point known as Engineer Survey Station "D" 2272 plus 48.5, the beginning of a Three degree (3° 00') curve to the left; thence Southeasterly along said Three degree (3° 00') curve to the left having a radius of One Thousand, Nine Hundred and nine and nine-tenths (1909.9) feet, a distance of Three Hundred and Twenty-three and five tenths (323.5) feet to a point known as Engineer Survey Station "D" 2275 plus 70 at the intersection of said located center line with the East line of said Northwest quarter of the Northwest quarter of said Section Fourteen (NW 1/4 of NW 1/4 of Sec. 14), said point being distant Three Hundred (300) feet, more or less, measured Northerly along said East line from the Southeast corner of said Northwest quarter of the Northwest quarter of said Section Fourteen (S.E. corner of NW 1/4 of NW 1/4 of Sec. 14); the above described strip of land contains an area of Six and twenty-nine one-hundredths (6.29) acres, more or less.

Also a strip of land One Hundred and Fifty (150) feet wide, lying equally seventy-five (75) feet on each side of the located center line of said Willamette Pacific Railroad Company's Railroad, heretofore duly adopted by the Board of Directors of the said plaintiff Railroad Company where the same is located over and across the lands of the defendants and marked by stakes set in the ground at distances of Fifty (50) feet and less, said strip of land being a portion of the Southeast quarter of the Northwest quarter, the Southwest quarter of the Northeast quarter and the Northwest quarter of the Southeast quarter of said Section Fourteen (SE1/4 of NW1/4; SW1/4 of NE1/4 and NW1/4 of SE1/4 of Sec. 14) of said Township and Range, Douglas County, Oregon; said located center line being particularly described as follows:

Commencing at a point where the said located center line intersects the North line of said Southeast quarter of the Northwest quarter of said Section Fourteen (SE1/4 of NW1/4 of Sec. 14) said point being known as Engineer Survey Station "D" 2285 plus 70, a point on a tapering curve to the right, said point being distant Three hundred and sixty (360) feet, more or less, measured Westerly along said North line from the Northeast corner of said Southeast quarter of the Northwest quarter of said Section Fourteen (NE cor. of SE1/4 of NW1/4 of Sec. 14) running thence from said point of commencement, Southeasterly along said tapering curve to the right, said curve having radii of varying and decreasing lengths, a distance of Eighty-Two and six-tenths (82.6) feet to a point known as Engineer Survey Station "D" 2286 plus 52.6, the beginning of a Five degree (5° 00') curve to the right, thence Southeasterly along said 5° 00' curve to the right, having a radius of One Thousand, one hundred and forty-six (1146.0) feet, a distance of Five hundred and seventy and seven-tenths (570.7) feet to a point known as Engineer Survey Station "D" 2292 plus 23.3, the beginning of tapering curve to the right, thence Southeasterly along said tapering curve to the right, said curve having radii of varying and

increasing lengths, a distance of One Hundred and twenty (120) feet, to a point known as Engineer Survey Station "D" 2293 plus 43.3, end of curve; thence Southeasterly along a line tangent to said last mentioned tapering curve a distance of One Hundred and ninety-one and two-tenths (191.2) feet to a point known-as Engineer Survey Station "D" 2295 plus 34.5, the beginning of a tapering curve to the left, thence Southeasterly along said tapering curve to the left, said curve having radii of varying and decreasing lengths, a distance of Ninety (90) feet to a point known as Engineer Survey Station "D" 2296 plus 24.5, the beginning of a Two degree ($2^{\circ} 00'$) curve to the left, thence Southeasterly along said $2^{\circ} 00'$ curve to the left having a radius of Two Thousand, eight hundred and sixty-four and eight-tenths (2864.8) feet, a distance of Two Hundred and sixty-seven and five-tenths (267.5) feet to a point known as Engineer Survey Station "D" 2298 plus 92.0, the beginning of a tapering curve to the left, thence South easterly along said tapering curve to the left, said curve having radii of varying and increasing lengths, a distance of Ninety (90) feet to a point known as Engineer Survey Station "D" 2299 plus 82.0, end of curve; thence Southeasterly along a line tangent to said last mentioned tapering curve, a distance of One hundred and fifty-five and five-tenths (155.5) feet to a point known as Engineer Survey Station "D" 2301 plus 37.5 the beginning of a tapering curve to the right; thence Southeasterly along said tapering curve to the right, said curve having radii of varying and decreasing lengths, a distance of Two hundred and seventy (270) feet to a point known as Engineer Survey Station "D" 2304 plus 07.5 the beginning of a five degree ($5^{\circ} 00'$) curve to the right, thence Southeasterly along said $5^{\circ} 00'$ curve to the right, having a radius of One Thousand, one hundred and forty-six (1146.0) feet, a distance of Ninety-four and seven-tenths (94.7) feet to a point known as Engineer Survey Station "D" 2305 plus 02.2, the beginning of a tapering curve to the right, thence Southeasterly along the said tapering curve to the right, said curve having radii of varying

and increasing lengths, a distance of One Hundred and fifty-seven and eight-tenths (157.8) feet to a point known as Engineer Survey Station "D" 2306 plus 60 at the intersection of said located center line with the East line of the said Northwest quarter of Southeast quarter of said Section Fourteen (NW1/4 of SE1/4 of Sec. 14,) said point being distant One Thousand and seventy (1070) feet, more or less, measured Northerly along said East line from the Southeast corner of the said North-west quarter of Southeast quarter of said Section Fourteen (SE cor. of NW1/4 of SE1/4 of Sec. 14).

The strip of land just above described contains an area of Seven and two-tenths (7.2) acres, more or less.

Also a strip of land One Hundred and fifty (150) feet wide, lying equally seventy-five (75) feet on each side of the located center line of said Willamette Pacific Railroad Company's railroad, heretofore duly adopted by the Board of Directors of the said plaintiff Railroad Company where the same is located over and across the lands of the defendants and marked by stakes set in the ground at distances of Fifty (50) feet and less, said strip of land being a portion of the Southeast quarter of the Southeast quarter of said Section Fourteen and the Southwest quarter of Southwest quarter of Section Thirteen (SE1/4 of SE1/4 of Sec. 14 and SW1/4 of SW1/4 of Sec. 13) of said Township and Range, Douglas County, Oregon; said located center line being particularly described as follows:

Commencing at a point where the said located center line intersects the North line of said Southeast quarter of South-east quarter of said Section Fourteen (SE1/4 of SE1/4 Sec. 14) said point being known as Engineer Survey Station "D" 2321 plus 20, a point on a Five degree (5°00') curve to the right, said point being distant Nine Hundred and forty (940) feet, more or less, measured easterly along said North line from the Northwest corner of said Southeast quarter of the Southeast quarter of said Section Fourteen (N.W.

cor. of SE1/4 of SE1/4 of Sec. 14); running thence from said point of commencement Southeasterly along said 5° 00' curve to the right having a radius of One Thousand, One Hundred and forty-six (1146.0) feet, a distance of One Hundred and Seventy and eight-tenths (170.8) feet, to a point known as Engineer Survey Station "D" 2322 plus 90.8, the beginning of a tapering curve to the right, thence Southeasterly along said tapering curve to the right, said curve having radii of varying and increasing lengths, a distance of Two Hundred and seventy (270) feet to a point known as Engineer Survey Station "D" 2325 plus 60.8, end of curve; thence Southeasterly along a line tangent to said last mentioned tapering curve a distance of Two Hundred and forty-seven and nine-tenths (247.9) feet to a point known as Engineer Survey Station "D" 2328 plus 08.7, the beginning of a tapering curve to the left, thence Southeasterly along said tapering curve to the left, said curve having radii of varying and decreasing lengths, a distance of Two Hundred and ten (210) feet to a point known as Engineer Survey Station "D" 2330 plus 18.7, the beginning of a Two degree (2°00') curve to the left; thence Southeasterly along said 2° 00' curve to the left, having a radius of Two Thousand, Eight Hundred and Sixty-four and eight tenths (2864.8) feet, a distance of Three Hundred and thirty-two and five tenths (332.5) feet to a point known as Engineer Survey Station "D" 2333 plus 51.2, the beginning of a tapering curve to the left; thence Southeasterly along said tapering curve to the left, said tapering curve having radii of varying and increasing lengths; a distance of Eighty eight and eight tenths (88.8) feet to a point known as Engineer Survey Station "D" 2334 plus 40 at the intersection of said located center line with the South line of the said Southwest quarter of Southwest quarter of said Section Thirteen (SW1/4 of SW1/4 of Sec.13), said point being distant Two hundred and ten (210) feet more or less, measured Easterly from the Southwest corner of the said Southwest quarter of the Southwest quarter of said Section Thirteen (SW cor. of SW1/4 of SW1/4 of Sec. 13).

The strip of land just above described contains an area of Four and fifty-five one-hundredths (4.55) acres, more or less.

Also a strip of land one One Hundred and fifty (150) feet wide, lying equally seventy-five feet (75) feet on each side of the located center line of said Willamette Pacific Railroad Company's Railroad, heretofore duly adopted by the Board of Directors of the said plaintiff Railroad Company, where the same is located over and across the lands of the defendants and marked by stakes set in the ground at distances of Fifty (50) feet and less; said strip of land being a portion of Lots Five (5), Four (4) and Three (3) of Section Twenty-six (Sec. 26) of said Township and Range, Douglas County Oregon; said located center line being particularly described as follows:

Commencing at a point where the said located center line intersects the East line of Lot number Five (5) of said Section Twenty-six (26), said point being at or near a point known as Engineer Survey Station "D" 2425 plus 80, a point on a tangent, said point being distant Four Hundred (400) feet, more or less, measured Southerly along said East line from the Northeast corner of said Lot Five of said Section Twenty-Six (Lot 5 of Sec. 26,) running thence from said point of commencement Southwesterly along said tangent through Lots Five (5), Four (4) and Three (3), a distance of Two Thousand, Six Hundred and Seventy (2670) feet, more or less, to a point at or near a point known as Engineer Survey Station "D" 2452 plus 50, at the intersection of said located center line with the mean low water line of the Umpqua River."

ALSO, that parcel of land described in Transfer Certificate of Title, Certificate No. 338, filed in Volume 3, Folium 319, Registrar of Titles, Douglas County, Oregon.

ALSO, a line of railroad, along the original surveyed center line of main track of Willamette Pacific Railroad Company, crossing Fiddle Creek Arm at the mouth of Lake Tsiltcoos; Five Mile Arm of Lake Tah Keniteh and Bays and Coves of said Lakes,

pursuant to an Act of State Legislature of State of Oregon referenced by Lords Oregon Law of 1891, Paragraph 3938, and Oregon Code of 1930, Section 62-401, and Oregon Revised Statutes 273.751.

ALSO, a line of railroad, along the original surveyed center line of main track of Willamette Pacific Railroad Company, crossing the Smith River and the Umpqua River, pursuant to an Act of State Legislature of State of Oregon referenced by Lords Oregon Law of 1891, Paragraph 3938, and Oregon Code of 1930, Section 62-401, and Oregon Revised Statutes 273.751.

ALSO, a parcel of land described in Transfer Certificate of Title, Certificate No. 1445, dated November 19, 1913, from United States of America to Willamette Pacific Railroad Company described therein as follows:

"Beginning at a point which is North Eighty one degrees East Five hundred and twenty eight feet (N 81° E 528 ft) from the meander post between Sections Twenty six and thirty five, Township Twenty one South, Range Twelve West, Willamette Base & Meridian (Secs 26 and 25 T 21 S R 12 W W B & M) on the east end of Purdy Island, sometimes called Bolon's Island, running thence along the Southerly property line of the grantor, Henry Wade, South Fifty-One degrees East Two hundred and thirty feet (S 51° E 230 ft.) more or less, at one hundred fifty two (152) feet intersecting the located center line of the Willamette Pacific Railroad Company's railroad known as the "D" line as the same is located and marked on the ground by stakes set therein at intervals of Fifty (50) feet and less, at or near Engineer Survey Station "D" 2454 + 49 of said located center line, to a point which is seventy five (75) feet distant southeasterly

measured at right angles to said center line; thence Northeasterly at a uniform distance of seventy five (75) feet from said center line, a distance of Two Hundred twenty five (225) feet, more or less, to a point; thence North Sixty six degrees West Two hundred forty feet (N 66° W 240 Ft) more or less, at seventy eight (78) feet intersect the said center line at or near Engineer Survey Station "D" 2452 + 35 of said center line; thence South Thirty seven degrees West one hundred and sixty five feet (S 37° W 165 ft) to the place of beginning, containing an area of One and Five One hundredths (1.05) acres more or less, lying and being in sections twenty six and thirty five, Township Twenty one South, Range Twelve West, W.M. (Secs 26 and 35 T 21 S R 12 W.W.M) lying Westerly of a line drawn Seventy five (75) feet Easterly and at a uniform distance from the located "D" center line aforementioned as the same is located and marked by stakes set in the ground at intervals of fifty (50) feet more or less across the aforementioned tide lands."

EXCEPTING therefrom the land described in the following instruments (Deeds, etc.) as follows:

<u>Date</u>	<u>Grantee</u>	<u>Date of Recording</u>	<u>Book</u>	<u>Page</u>
08-03-1977	L.E. Meier, et al	10-13-1977	652	725
06-22-1979	Harry E. Maxwell	09-05-1979	#79-14163	
11-30-1918	Arthur Walker	07-19-1919	79	620
12-18-1959	Douglas County	02-03-1960	291	24

ALSO EXCEPTING those parcels of land situated in Lot 5, Section 1, Township 20 South, Range 12 West, W.M. described as follows:

Parcel A:

"Beginning at a point in the north line of the parcel of land described in the deed from J.A. Janelle and Mary B. Janelle to the Willamette Pacific Railroad Company recorded in Book of Deeds, Volume 73 page 21, Douglas County Records, that bears South 80° 31' West 4666.9 feet from the east one quarter corner of said Section 1 and also distant 50.0 feet easterly measured at right angles from the center line of the originally located main track of the Southern Pacific Company's Coos Bay Branch; thence East along the North line of the parcel of land described in said deed 55.86 feet to the westerly line of the parcel of land described in that certain indenture dated June 9, 1942, Southern Pacific Company to the County of Douglas; thence South 0° 39' West along said westerly line 165.01 feet to the southerly line of the parcel of land described in the above mentioned deed; thence West along said southerly line 49.65 feet to a point that is distant easterly 50.0 feet measured at right angles from the said center line of the originally located main track; thence North 1° 30' 30" West 165.06 feet to the point of beginning.

"Parcel B:

"Beginning at a point in the north line of the land described in deed dated October 4, 1913 from J.A. Janelle and Mary R. Janelle, his wife, to Willamette Pacific Railroad Company, recorded October 17, 1913 in Book of Deeds, Volume 73, page 21, Douglas County records, that is the northwest corner of the 0.15 of an acre parcel of land described in deed dated June 9, 1942 from Southern Pacific Company to the County of Douglas, and is distant 770 feet South and 4547 feet West from the east quarter-section corner of said Section 1; thence East along said north line of said land described in said deed dated October 4, 1913, a distance of 585 feet, more or less, to the northeast corner of said land in the east line of said Lot 4, Section 1; thence South along said east line, 165 feet to the southeast corner of the land described in said deed dated October 4,

1913; thence West along the south line of said land described in said deed dated October 4, 1913, a distance of 585 feet, more or less, to the southwest corner of the aforesaid 0.15 of an acre parcel of land described in said deed dated June 9, 1942; thence North 0° 39' East along the west line of said 0.15 of an acre parcel of land 165.0 feet to the point of beginning."

Parcel C:

"Beginning at the point of intersection of the westerly line of land (100 feet wide) described in deed dated April 6, 1912 from Sylvester J. Cox to Willamette Pacific Railroad Company, recorded April 29, 1912 in Book 70 of Deeds, page 463, Records of Douglas County, with the southerly line of land described in deed dated October 4, 1913 from J.A. Janelle, et ux, to Willamette Pacific Railroad Company, recorded October 17, 1913 in Book 73 of Deeds, page 21, Records of Douglas County, that is distant 50.0 feet westerly, measured at right angles, from the original located center line of Southern Pacific Company's main track (Coos Bay Branch), and also distant South 934 feet from the north line of said Lot 5; thence West along said southerly line, 110.00 feet to a point in the government meander line of Lake Siltcoos; thence along said meander line as follows: North 10° 00' 00" West, 24.33 feet and North 10° 00' 00" East, 143.27 feet to a point in the northerly line of land described in said deed dated October 4, 1913; thence leaving said meander line, East along last said northerly line, 85.00 feet to a point in said westerly line of land (100 feet wide) described in said deed dated April 6, 1912, distant 50.0 feet westerly, measured at right angles, from said original located center line; thence South 1° 30' 30" East, parallel with said original located center line, 165.12 feet to the point of beginning."

ALSO EXCEPTING that parcel of land described in deed dated December 31, 1913, to Asa Henderson, situated in the South half of the Northeast quarter of Section

11, Township 22 South, Range 12 West, W.M., described in said deed as follows:

"Beginning at a point in the said South half of the Northeast quarter (S.1/2 of N.E.1/4) of said Section Eleven (11) that is distant Seventy-five (75) feet measured Northwesterly at a right angle from a point on the located center line of the Willamette Pacific Railroad Company's railroad, known as Engineer Survey Station "N" 2649+70.5, said point being also known as Engineer Survey Station "A" 2649+70.5; thence in a Southwesterly direction parallel to and at a uniform distance of Seventy-five (75) feet Northwesterly from the located "A" center line of the said Willamette Pacific Railroad Company's railroad to a point on the South line of the said South half of Northeast quarter (S.1/2 of N.E.1/4) of said Section Eleven (11); thence Westerly along and on said South line to a point that is distant Seventy-five (75) feet, measured Northwesterly on a radial line from the abandoned located "N" center line of the said Willamette Pacific Railroad Company's railroad; thence in a Northeasterly direction parallel to and at a uniform distance of Seventy-five (75) feet Northwesterly from said abandoned located "N" center line to the point of beginning."

ALSO EXCEPTING those parcels of land described in deed dated February 24, 1914, to Gardiner Mill Company, described therein as follows:

"FIRST: Beginning at a point in the Northwest quarter of the Southeast quarter (N.W.1/4 of S.E.1/4) of Section Eleven (11), Township Twenty-two (22) South, Range Twelve (12) West, Willamette Meridian that is distant Seventy-five (75) feet measured Westerly at a right angle from a point on the located center line of the Willamette Pacific Railroad Company's railroad known as Engineer Survey Station "A" 2666+45.5, said

point being also known as Engineer Survey Station "N" 2667+03.1; thence in a Northerly direction parallel to and at a uniform distance of Seventy-five (75) feet Westerly from the located "A" center line of said railroad to a point on the North line of said Northwest quarter of Southeast quarter (N.W. 1/4 of S.E. 1/4) of said Section Eleven (11); thence Westerly along and on said North line to a point that is distant from the abandoned located "N" center line of said railroad; thence in a Southerly direction parallel to and at a uniform distance of Seventy-five (75) feet Westerly from said abandoned located "N" center line to the point of beginning.

SECOND: Beginning at a point in the West half of the Northeast quarter (W. 1/2 of N.E. 1/4) of Section Fourteen (14), Township Twenty-two (22) South, Range Twelve (12) West, Willamette Meridian that is distant Seventy-five (75) feet measured Easterly at a right angle from a point on the located center line of the Willamette Pacific Railroad Company's railroad known as Engineer Survey Station "N" 2697+65.6, said last mentioned point being also known as Engineer Survey Station "B" 2698+09.3; thence in a Southerly direction parallel to and at a uniform distance of Seventy-five (75) feet Easterly from the located "B" center line of said railroad to a point on

98-09238

STATE OF OREGON)
COUNTY OF DOUGLAS) SS
I, DOYLE SHAWER JR., COUNTY CLERK AND
RECORDER OF CONVEYANCES, DO HEREBY CERTIFY
THAT THIS INSTRUMENT WAS RECORDED

98 APR 23 PM 3:07

DOYLE SHAWER JR.
DOUGLAS COUNTY CLERK

IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Oregon International Port of Coos Bay – Feeder Line
Application – Coos Bay Line of the Central Oregon &
Pacific Railroad, Inc.**

VERIFIED STATEMENT OF CHARLES W. REX III

My name is Charles W. "Sandy" Rex III. I am co-owner of RMI Midwest ("RMI"), a firm specializing in real estate appraisal. My business address is 1200 Central Avenue, Suite 330, Wilmette, Illinois 60091. My background and qualifications, which include more than thirty-four years of experience in real estate appraising, specializing in the valuation and analysis of railroad corridors and other rail properties, are set forth in Attachment 2. Over the last 15 years, I have conducted approximately 100 significant rail property valuation projects and appraisals for transportation companies. See Attachment 2 (qualifications and experience).

I am a licensed real estate appraiser in several states and have been qualified as an expert witness in state and federal courts in California, Florida, and Illinois. See Attachment 2. I obtained a temporary State Certified General Appraiser license from the State of Oregon (No. TNR1662) for the purpose of appraising Central Oregon & Pacific Railroad Company's ("CORP's") Coos Bay Subdivision. See Attachment 3.

I previously submitted a Verified Statement, and an appraisal of the land constituting the right-of-way of that portion of the Coos Bay Subdivision that CORP seeks authority to abandon, on July 14, 2008 in Docket No. AB-515 (Sub-No. 2), *Central Oregon & Pacific R., Inc. – Abandonment and Discontinuance of Service – in Coos, Douglas and Lane Counties, OR*. I also sponsored an appraisal of the land on a rail corridor that CSX Transportation, Inc. proposed to abandon in Docket No. AB-55 (Sub-No. 643), *CSX Transportation, Inc. – Abandonment*

Exemption – In LaPorte, Porter and Stark Counties, IN (March 31, 2004). In that proceeding, the Board adopted the evidence and valuation that I presented on behalf of CSXT. *See* STB Dkt. No. AB-55 (Sub-No 643), *CSX Transportation, Inc. – Abandonment Exemption – In LaPorte, Porter and Stark Counties, IN*, Decision at 5-6 (April 30, 2004).

The purpose of this Verified Statement is twofold. Part I of my testimony presents my appraisal of the Net Liquidation Value (“NLV”) of the land constituting the right-of-way of the rail line that is the subject of the Feeder Line Application submitted by the Oregon International Port of Coos Bay (the “Port”) in this proceeding (the “Feeder Line Segment”). The Feeder Line Segment consists of (1) the same CORP line between MP 763.13 near Cordes, OR and MP 669.0 near Vaughn, OR that is the subject of CORP’s abandonment application in Docket No. AB-515 (Sub-No. 2) (the “Abandonment Segment”), and (2) CORP’s line between MP 669.0 near Vaughn and MP 652.114 near Danbo, OR, which the Port also proposes to acquire pursuant to its Feeder Line Application in this proceeding (the “Vaughn- Danbo Segment”). As Part I demonstrates, the NLV for the land underlying the Feeder Line Segment is [], consisting of [] for the land underlying the Abandonment Segment and [] for the land underlying the Vaughn-Danebo Segment. A report describing in detail the methodology, comparable sales information and calculations upon which my NLV appraisal is based is set forth in Attachment 1.

In Part II of this Verified Statement, I comment on the appraisal of the land underlying the Feeder Line Segment submitted by Port witness DeVoe. *See* Feeder Line Application, Vol. II and III (the “DeVoe Appraisal”). As my testimony shows, the DeVoe Appraisal is based upon faulty methodologies, a variety of theories (apparently invented by witness DeVoe) that are contrary to accepted principles of land appraisal, and assumptions that are inconsistent with the

limited comparable sales information upon which witness DeVoe purports to rely. Moreover, witness DeVoe's judgments regarding the value of certain categories of land -- including his overall conclusion that more than 80% of the land underlying the Feeder Line Segment is essentially worthless -- are simply not credible.

I. NET LIQUIDATION VALUE OF THE FEEDER LINE SEGMENT.

At CORP's request, I conducted a comprehensive appraisal of the land constituting the right-of-way of the Feeder Line Segment, and developed an estimate of the NLV of that land. My appraisal was conducted using standard, well-established appraisal methodologies and in accordance with applicable professional standards and practices. See Attachment 1 at 3. The methodology that I used, which is discussed in detail in Attachment 1 (at 6-7, 28-32, 39-41), can be summarized as follows:

First, based upon a title analysis of each individual parcel comprising the right-of-way provided by CORP witness Chapman (an experienced Oregon real estate attorney), I excluded from my analysis (and assigned "zero" value to) any parcels that CORP does not own in fee simple. The title analysis conducted by witness Chapman is set forth in her Verified Statement.

Second, I developed the "Gross Liquidation Value" for the land that CORP does own in fee by applying the Across-The-Fence ("ATF") methodology. Specifically, I inspected the Abandonment Segment by helicopter and car on May 12-15, 2008. I conducted a supplemental inspection of the Vaughn-Danebo Segment from the ground on July 26, 2008. Based upon my observations during those inspections, as well as my analysis of ortho-rectified aerial photography and various government land use and zoning overlay GIS files, I determined the ATF land uses for the subject parcels. Changes in land use were plotted in ArcGIS using GPS data acquired during the inspection. ArcGIS was used to calculate the areas of the corridor from georeferenced railroad valuation maps. ATF land use lines were then plotted in ArcGIS where

the segment areas were calculated. In total, the right-of-way land on the Feeder Line Segment that CORP owns in fee consists of 1,754± acres, including 1,466± acres on the Abandonment Segment and 288± acres on the Vaughn-Danebo Segment.

Third, I conducted a search for sales comparable to the subject parcels, based upon ATF land uses, in Lane, Douglas and Coos Counties. Each comparable sale was plotted in ArcGIS, and all accessible sales were inspected between May 12-19, 2008 (for the Abandonment Segment) and on August 4, 2008 (for the Vaughn-Danebo Segment).

Fourth, based upon the identified comparable sales and listings, I estimated the ATF value for each parcel on the Feeder Line Segment for which CORP holds fee title. The specific ATF land use and estimated ATF value assigned to each parcel constituting the Feeder Line Segment right-of-way are set forth in Figure 25 of my Report. See Attachment 1 at 34-38. As Figure 25 shows, the total Gross Liquidation Value of the land comprising the Feeder Line Segment that CORP owns in fee is \$[], consisting of a Gross Liquidation Value of \$[] for land on the Abandonment Segment and \$[] for land on the Vaughn-Danebo Segment.¹

Finally, I determined the estimated NLV of the land comprising the Feeder Line Segment. I calculated the NLV by discounting the Gross Liquidation Value to take into account the time required to sell the individual parcels, holding costs, the cost of sales and the yield rate required by a potential purchaser. Estimated ad valorem taxes were accounted for by adding the weighted average effective tax rate to the discount rate. It was assumed that the land would be

¹ My estimate of the Gross Liquidation Value for the Abandonment Segment is slightly higher than set forth in the appraisal that I previously submitted with CORP's abandonment application due to the misclassification of Parcel 11 on Valuation Map V-2/6 as less-than-fee when the title held is fee. In addition, the Net Liquidation Value set forth in the previous appraisal is less due to certain adjustments made in estimating the value of the reserved timber rights in Lane and Coos Counties.

sold by CORP to a single purchaser, who would then disassemble the property for sale of individual parcels. I assumed that the sellout period for individual parcels would be ten (10) years. Typically, the expectation is that the sales would be distributed evenly over the sellout period. However, in order to account for the current downturn in the real estate market (especially the residential segment), I further assumed that the first year sales volume would be only 50%, and the second year sales volume would be only 75%, of a typical year's sales volume. Because of this anticipated slow start to the sellout process, I extended the sellout period by one year, to eleven (11) years. In addition, because it is possible (if not likely) that not all of the parcels would be sold within the estimated sellout period, I adjusted the NLV to reflect my estimate that 75% of the residential and rural residential parcels, 90% of the commercial parcels, 25% of the industrial parcels, and 90% of the acreage parcels would sell within the 11-year sellout period. I estimated the cost of sale to be approximately 6%, based upon typical real estate commissions in the area where the subject property is located and estimated closing costs equal to approximately 1% of gross land value. This estimate also takes into consideration that the typical buyer would contact most of the adjacent property owners, thus foregoing the payment of real estate commissions in many instances. I further estimated a risk rate of 18% for the subject property, based upon discussions with area experts knowledgeable about residential development and required rates of return for projects similar to the sale of the disassembled rail corridor. To aid in these estimates, I held conversations with Craig E. Zell, MAI, SRA of Beaverton, Oregon and Roxanne R. Gillespie, MAI of Eugene, Oregon. *See Attachment 1 at 39.*

Based upon the foregoing methodology (as explained in greater detail in Attachment 1), I estimate the NLV of the land comprising the Feeder Line Segment to be [], consisting

of a NLV of [] for land on the Abandonment Segment and [] for land on the Vaughn-Danebo Segment. *See* Attachment 1.

II. THE DEVOE APPRAISAL IS FATALLY FLAWED

A. Witness DeVoe's Methodology Is Faulty And Inconsistent.

Witness DeVoe's appraisal of the land underlying the Feeder Line Segment suffers from numerous methodological flaws and inconsistencies that render his conclusions unreliable. Indeed, while the Port represents that "[f]or each Valuation Unit, Mr. DeVoe developed a unit price by using an across-the-fence valuation methodology" (Feeder Line Application, Vol. II at 20), in fact, witness DeVoe did no such thing. Instead, in estimating the value of both residential and timbered property along the CORP right-of-way, witness DeVoe discarded the ATF methodology altogether in favor of unique "theories" and methodologies that are apparently of his own invention. As this part of my Verified Statement shows, the result is an appraisal that is not consistent with accepted principles of land appraisal, and which is contradicted by the very comparable land sales upon which witness DeVoe purports to rely.

1. DeVoe Did Not Consider The Status of CORP's Title.

The DeVoe Appraisal is fundamentally flawed because it fails even to consider the title status of the subject land. Witness DeVoe states that he was not provided with a title report, and therefore "assumed that [CORP] owns the unencumbered fee-simple title to the subject [land]." DeVoe Appraisal at 5. However, the valuation maps included in witness DeVoe's workpapers contained information regarding CORP's title to the parcels depicted on those maps.

It is my understanding that status of title is a critical element of the Board's consideration of NLV of railroad land. In my appraisal, ATF value estimates were developed only for those parcels for which CORP clearly holds fee title. The title was mapped using the title analysis

presented by witness Chapman, together with the "Schedule of Property" on each railroad Valuation Map (Val Map).

Witness DeVoe's failure to consider the issue of title led him to assign values to significantly more land than CORP owns in fee. Specifically, witness DeVoe conducted his appraisal as if the CORP owned in fee 1,850 acres, approximately 100 acres more than it actually does. For example, witness DeVoe included 6.32 acres in his Valuation Section 60 and 12.83 acres in his Valuation Section 74 that CORP does not own in fee. While Mr. DeVoe might attempt to dismiss this error on the grounds that it "favors" CORP, it is nevertheless indicative of the incomplete nature of the DeVoe Appraisal generally. Witness DeVoe's failure to examine title records also required him to make speculative assumptions regarding the boundaries of the subject parcels. See DeVoe Appraisal at 5-7, 9. Indeed, witness DeVoe states that "in many cases the exact amount of remaining subject area is unclear from the data I found to be readily available." DeVoe Appraisal at 9. Yet, Mr. DeVoe had in his possession copies of the Valuation Maps that depict the subject property boundaries. DeVoe would not have had such problems if he had inspected the title documents, as I did in preparing my appraisal.

2. Witness DeVoe Did Not Identify ANY Comparable Sales for Many Communities.

Witness DeVoe's appraisal is based on a very thin set of comparable sales data. For example, he purported to estimate the value of residential land in most of the communities along the Feeder Line Segment without identifying any comparable land sales to support his estimates. The only comparable sales of residential land offered by witness DeVoe in support of his appraisal of residential land across the entire 111-mile Feeder Line Segment are two (supposedly) comparable sales in Swisshome, a small town of 320 people in Lane County, and two (supposedly) comparable sales in Deadwood, a small community that is not even located

along CORP's rail line. DeVoe Appraisal at 147. Witness DeVoe chose not to identify any comparable sales of residential property for Coos or Douglas Counties, or for larger towns such as Veneta, Mapleton, Florence, Reedsport, and Lakeside. His repeated assertion that "no [comparable] sales in the area were found to provide a basis for matched pair analysis" (*see, e.g.*, DeVoe Appraisal at 166, 169, 173-174) is highly dubious. As Attachment 1 indicates, I was able to identify comparable sales of residential property in virtually all of the communities along the Feeder Line Segment, and my appraisal is based on analysis of ATF values specific to each community. Witness DeVoe's attempt to characterize this fundamental shortcoming in his analysis as "of little consequence because although the location is different the market characteristics are essentially the same" (DeVoe Appraisal at 169) is nonsensical. As any layman knows, the three most important characteristics in real estate valuation are "location, location, and location." As my appraisal shows, there are very significant differences in the per-acre value of residential land among the communities along the Feeder Line Segment. *See* Attachment 1 at 9-11, 13-14, 17-20, 24-27. The community (Swisshome) selected by witness DeVoe as the basis for estimating the value of all residential land along the line has the lowest per-acre residential property value of any community along the Feeder Line Segment. Witness DeVoe's failure to take account of comparable sales of residential land specific to each community renders his appraisal unreliable.

3. Witness DeVoe Did Not Inspect Many of His Comparable Sales.

Another major shortcoming of the DeVoe Appraisal is witness DeVoe's failure to actually inspect properties that he offers as "comparable sales." Witness DeVoe claims that "[i]n general, the rurally located comparable sales were not viewed in person due to lack of accessibility." DeVoe Appraisal at 4. He attempts to excuse this failure on the grounds that "often little meaningful information can be gleaned from roadside inspection due to tree cover

and topographic constraints.” *Id.* This excuse makes no sense; some of the most important information to be gleaned from a physical inspection of comparable sales is whether there are topographic constraints and what the tree cover is like. A physical inspection of comparable sales is also necessary to find out whether there are improvements on the property and to determine if the neighborhoods in which the subject property and the comparable sale are located have similar characteristics.

In contrast to witness DeVoe’s failure to study his comparable sales, either I or my associate, Camcron Rex, physically inspected virtually every comparable sale that was accessible that I relied upon in conducting my appraisal. We took pictures and made notes regarding the physical inspection of those properties (which appear in my workpapers). Witness DeVoe proffers no such supporting information for sales he judges to be “comparable.”

4. Witness DeVoe Fails to Apply Consistent Valuation Methodology.

In the valuation of corridors, the ATF value is a major component of the valuation process, whether the highest and best use of the corridor is as a corridor or for disassemblage as in the estimate of net liquidation value. In general, the ATF value reflects the particular location and market conditions of the subject property. In net liquidation valuation, the ATF value provides a reliable indicator of the gross price that a particular parcel would be expected to sell for to an adjacent property owner or other entity.

ATF value is based on the land uses of the adjacent properties and their highest and best use. The ATF value of a single valuation segment is estimated by valuing the properties adjacent to this portion of the corridor. Such value is based on sales that are comparable as to highest and best use, size, location, and market conditions. Adjustments are not normally made for utility considerations. In cases where the adjoining land use is institutional or government use such as a

park site, school, or state forest, the ATF valuation is based on the highest and best use of that land.

Witness DeVoe professes to agree with my view that “the best starting point for estimating the subject’s base value is the across-the-fence (ATF) value.” DeVoe Appraisal at 70; *see* Attachment 1 at 2. However, while witness DeVoe makes frequent references to “ATF value” throughout his appraisal, he does not, in fact, apply an ATF methodology in estimating the gross liquidation value of most of the land underlying the Feeder Line Segment. He attempts to justify his frequent departures from ATF value on the grounds that (according to him) “the encumbered subject can generally be considered to contribute potential value at a lesser rate than ATF values.” DeVoe Appraisal at 70.

For example, in appraising residential property, witness DeVoe discards ATF analysis in favor of his so-called “base homesite theory,” which is premised on the notion that a purchaser of residential land will be willing to pay only a minimal amount for any acreage in excess of the minimum acreage required by law for a homesite. According to witness DeVoe, any acreage in excess of the required minimum “represents only agricultural and/or open space utility to the abutters and therefore direct application of ATF values are [sic] not always appropriate.” DeVoe Appraisal 71. In applying this “theory,” witness DeVoe ignored market evidence provided by the (few) comparable sales of residential properties identified in his report.

Likewise, in Valuation Unit 3 (“Forest Nominal”), witness DeVoe pays lip service to the ATF values indicated by the comparable sales data, saying that “[a]lthough the market data presented here has little direct relevance to this Valuation Unit, it was judged worthwhile to include here to exemplify the range of ATF values to help put the nominal value [of \$0] conclusion in perspective.” DeVoe Appraisal at 109 (emphasis added). He then makes reference

to a small number of supposed comparable land sales in estimating the value of land in his Valuation Units 3 and 4 ("Forest Nominal" and "Forest Desirable" property). However, witness DeVoe did not apply even the lower ATF values indicated by his comparable sales of cut-over land. Rather, he substituted for those ATF values his own opinion that none of the more than 1,000 acres of forested land in Valuation Unit 3 has any value whatsoever, because no abutting land owner would be interested in acquiring CORP's forested land. Thus, the "methodology" upon which witness DeVoe's appraisal of forested land is based is his (unsupported) opinion, not an ATF value-based analysis.

It is not a proper application of the ATF appraisal methodology to ignore altogether the values indicated by comparable sales data. Indeed, it is certainly not appropriate for an appraiser to substitute for comparable sales data the arbitrary assumption that all of the land in an entire valuation segment has "zero" value simply because the appraiser feels (without factual support) that no adjacent property owner would purchase the land. Adjacent property owners purchase sections of former corridors for a multitude of reasons, including:

- Providing additional access to portions of their property
- Securing control of the additional property in order to prevent undesirable use or development by another party
- Added security from trespassers and adverse uses of the property
- Added legal and physical buffer
- Control of additional fire protection
- Aesthetic reasons
- Sometimes the property offers a developable or buildable site

One cannot reasonably make an across-the-board assumption (as witness DeVoe did) that a given owner type or owner of a given use will have no interest in acquiring adjoining land that

was part of a former corridor. Market experience throughout the country conclusively shows that this is not true.

Moreover, while adjustments to ATF values are sometimes appropriate to account for unique characteristics of the subject property, such adjustments must be market supported. For instance, certain restrictions that pertained to the former rail use may not have an impact on the use of the property by an adjoining or new property owner. Sale of properties subject to similar restrictions provide the best evidence as to whether (and to what extent) the market discounts a property on account of such restrictions.

Witness DeVoe does not present any market evidence to support these departures from ATF valuation — instead, he simply ignored what ATF values told him. In doing so, witness DeVoe not only violated accepted principles of land appraisal, he also ignored the experience of George Ross, an expert in rail corridor disposition upon which DeVoe purported to rely for insights regarding the railroad land market. DeVoe Appraisal at 72. (Witness DeVoe's need to resort to advice from Mr. Ross reflects DeVoe's own lack of experience in appraising rail corridors.) As witness DeVoe's workpapers indicate, Mr. Ross advised that it is his company's "policy [] to accept no less than ATF values." *See* Attachment 5.

While witness DeVoe did purport to apply the ATF methodology in estimating the value of industrial land along the Feeder Line Segment, he once again ignored the market evidence by applying an across-the-board discount of 50% from ATF value on account of certain rights reserved by Southern Pacific Transportation Company ("SPT") in the deeds conveying title to the CORP right-of-way. As discussed below, this adjustment to ATF value is not supported by Oregon law or by market evidence of the prices at which similarly-encumbered properties have actually sold.

In short, the DeVoe Appraisal is not based upon an ATF methodology – or, for that matter, any other market-based methodology consistently applied. Instead, witness DeVoe substituted his own subjective judgments about the value of the subject land, and invented previously unknown “theories” and “methodologies” to explain those judgments. Witness DeVoe’s failure to adopt and apply any coherent methodology in conducting his appraisal should lead the Board to reject it outright.

B. Witness DeVoe’s “Base Homesite Theory” Is Conceptually Invalid and Based Upon A Faulty Methodology.

1. DeVoe’s “Base Homesite Theory” Is Not A Valid Appraisal Technique.

Witness DeVoe bases his appraisal of all of the residential property along the Feeder Line Segment upon what he describes as the “base homesite theory.” *See* DeVoe Appraisal at 71. This theory posits that “[t]he land element typically sells on a price per lot basis, with the overwhelming majority of value being associated with [sic] base homesite component.” DeVoe Appraisal at 71. Thus, according to witness DeVoe, if the price of a 10,000 s.f. residential lot is \$50,000 (or \$5,000 s.f.), the “base homesite theory” holds that an adjoining residential lot of 11,000 s.f. will sell for approximately the same amount, rather than for \$55,000 (or \$5,000 s.f.) *Id.*

In my 34 years of appraising land, teaching appraisal courses and researching the appraisal literature, I have never heard of the “base homesite theory.” It is simply not an accepted basis for land valuation. Rather the “base homesite theory” (and the accompanying “base homesite methodology” applied by witness DeVoe (*see* DeVoe Appraisal at 157) appear to be creations of his own making.

On its face, the “base homesite theory” defies both logic and market reality. The notion that a larger residential lot will not be more desirable to a potential purchaser than a smaller lot

defies market experience. In most subdivisions, if two side by side lots are offered for sale, and the only difference is that one lot is 10,000 s.f. and the other 11,000 s.f., the price of the 11,000 s.f. lot will be higher. The market, and most of us, would prefer the larger lot, and would be willing to pay an additional amount for the extra acreage. To say, as witness DeVoc does, that "any additional area [beyond the minimum required by law for a homesite] usually contributes use/value more oriented towards agricultural and/or open space" is contrary to the principles of highest and best use. See DeVoc Appraisal at 71. A larger homesite may allow one to build a larger house; provide more flexibility with regard to the location of the house on the lot; provide more play area for one's children, more garden area, and/or more privacy from neighboring properties. The list of possible residential uses is even longer when you are considering land like the subject, where larger parcels may be available.

It takes no more than a glance at the comparable sales for rural residential properties in Coos County to see that witness DeVoc's base homesite theory has no validity. The list of comparables for rural residential property in Coos County (Land Use 27) that I identified in my appraisal is set forth in Table 1 below.

Table 1: Coos County Rural Residential Sales (Land use 27)

Sale	Seller	Buyer	County	Sale date	Sale price	Size (acre)	Price/acre
2005-11340	PYLE, SHARON M., TRUSTEE	NEIFERT, JAMES A. & LINDA K.	COOS	7/27/2005		0.53	
2006-13945	OREGON RURAL PROPERTIES, INC.	SLAVEN, BERNADINE M.	COOS	10/13/2006		2.07	
2006-15344	OREGON RURAL PROPERTIES, INC.	CLINTON, JERRY A. & CHERI R	COOS	10/13/2006		2.04	
2006-15426	OREGON RURAL PROPERTIES, INC.	SLAVEN, BERNADENE M.	COOS	10/13/2006		2.52	
2006-2557	PECK, HAROLD D. & CHARLOTTE M.	JOHNSON, KERRY & TERESA	COOS	2/24/2006		1.04	
2006-2881	SKEELS, FRED V.	WALTERS, JEFFERY & SHAWNA	COOS	2/28/2006		2.04	
2006-6858	HANSON, JOHN M. & JANENE S.	KIRKPATRICK, DANNY J., ETAL	COOS	5/22/2006		2.49	
2007-10480	BERKLUND, GLEN E. & MARY E.	SESAR, STAN & BETTY, TRUSTEES	COOS	7/31/2007		2.01	

These sales show that, contrary to witness DeVoe's "base homesite theory," purchasers paid approximately twice as much for two-acre lots than they did for a one-acre lot, and more than double for a one-acre lot as for a lot of 0.53 acres. Indeed, the comparable sale information set forth in Table 1 demonstrates that the value of "excess" residential acreage in Coos County is anything but de minimis (as witness DeVoe's analysis assumes).

Likewise, comparable sales in Veneta show that DeVoe's base homesite theory has no validity. In Table 2, below, I list four comparable sales for single-family residential property in Veneta, OR, which is in Lane County, where Swisshome is also located. Two of these comparable sales involved the very same buyer, who purchased two different size parcels less than 3 months apart.

As Table 2 shows, this purchaser valued a 1-acre lot at very close to the same price per acre as it did the smaller "base homesite" of 0.14 acres

Table 2: Veneta Single-Family Residential Sales (Land use 36)

Sale	Seller	Buyer	County	Sale date	Sale price	Size (acre)	Price/acre
2007-005592	ROSS INVESTMENTS INC.	BREEDEN BROS INC.	LANE	1/24/2007		0.14	
2007-023358	ROSS INVESTMENTS INC.	BREEDEN BROS INC.	LANE	4/4/2007		1.00	
2007-038822	LAWLER, DAVID R.	ANDERSON, STEVE	LANE	6/6/2007		0.16	
2007-045698	CITY OF VENETA	GORILLA CAPITAL INC	LANE	7/2/2007		1.11	

Any theory of market behavior must be proven in the market itself. If the "base homesite theory" were valid, then once the minimum size for a residential property were met, an increase in size would reflect dramatically lower values per acre. A review of the residential comparable sale spreadsheets in my appraisal including: Figure 2, page 9; Figures 4 and 5, page 13; Figure 7, page 14; Figure 12 and 13, page 20; Figure 19, page 24; Figure 21, page 25; and Figure 23, page 26, all in Attachment 1, consistently show that within each market area the "base homesite

theory” is not supported by the comparable sale data. While the price per acre does vary as evident by the numerous sales, there is no evidence of a substantial decrease in unit value as the size increases.

Indeed, witness DeVoe’s “base homesite theory” is fatally undermined by the very sales information that he uses to illustrate it. In his discussion of Valuation Unit 7 (Rural Residential in Lane County), witness DeVoe subtracts the \$65,000 price of a 0.23 acre property in Swisshome, OR that he characterizes as a “base homesite” from the \$100,000 paid for a 7-acre residential tract in the same community. From this calculation, he estimates that the value of the “excess” acreage in the larger parcel is approximately \$5,000 ($\$35,000 / 7 \text{ acres} = \$5,000/\text{acre}$). However, as the plat for witness DeVoe’s purported “base homesite” shows, that transaction involved the sale of two side-by-side residential lots by the same purchaser. See DeVoe Appraisal at 150. If witness DeVoe’s “base homesite theory” were correct, the buyer would not have agreed to pay nearly \$65,000 to acquire twice as much land as the law required to build a home in that part of Swisshome.

2. Witness DeVoe’s Base Homesite Methodology Is Unsound.

Even if the “base homesite theory” had any conceptual validity – and it does not – witness DeVoe’s methodology for applying the theory is nothing more than an apparent artifice to devalue all of the residential land along the Feeder Line Segment. Witness DeVoe applies his “base homesite theory” in the following manner:

- DeVoe identified two land sales in each of Swisshome and Deadwood, OR, which he characterizes (without any analysis) as “matched pairs”:
 - the first “matched pair” is a 0.23 acre property, consisting of two adjoining lots (one with a small home) in the main residential section of Swisshome located next to the CORP rail line (RR-1) and a 7-acre parcel in another part of Swisshome further away from the line (RR-2); and

- the second “matched pair” is a lot of 0.75 acres in the main residential area of Deadwood (RR-3) and an 8.11 acre plot located between Deadwood and Greenleaf OR (RR-4). Neither Deadwood nor Greenleaf is located along the CORP right-of-way.
- For each “matched pair,” witness DeVoe subtracted the price of the smaller property from the price of the larger property. For example, in Swisshome, he subtracted the price of the 0.23-acre lot (\$65,000) from the price at which the 7-acre lot sold (\$100,00). He then divided the price difference (\$35,000) by the number of acres in the larger parcel (7) to determine a price of \$5,000 per acre for the (supposedly) “excess” property contained in the larger parcel.
- Based upon this subtraction methodology, witness DeVoe determined that the average difference for both matched pairs was approximately \$7,500 per acre. Without any explanation, witness DeVoe asserts that his calculations “provide[] good support for the value that the rural residential market places on area in excess of the base homesite area.” DeVoe Appraisal at 157.
- DeVoe then discounted the \$7,500/acre value that he derived for “excess” acreage by 50%, to \$3,750 per acre, because (according to him), “the subject is so heavily encumbered by the SPTC easements/reservations.” *Id.* (In part E below, I demonstrate why this discount is not supported by market evidence.)
- Finally, without even considering the per-acre value of a “base homesite” or larger residential parcels in any other community, witness DeVoe applied the price for “excess” acreage that he calculated for Swisshome (\$3,750 per acre) to all residential property along the entire 111-mile Coos Bay Subdivision.

There are numerous problems with this “base homesite methodology”:

First, matched-pair analysis as it is done here is not a statistically valid concept. Witness DeVoe’s matched-pair analysis attempts to use two data points to solve for an unknown value and apply the result of those two data points for all properties along the line. Matched-pair analysis is taught in basic appraisal courses. Matched-pair analysis, or paired data analysis, requires taking “sales or rental data on nearly identical properties.” Appraisal Institute, *The Appraisal of Real Estate* 439 (12th ed. 2001). The purpose of a matched pair analysis is to “isolate a single characteristic’s effect on value or rent.” *Id.* Virtually all experienced appraisers agree that matched-pair analysis is not very useful in practice because it is almost impossible to find suitable matched pairs with identical or very similar characteristics.

Second, the properties that witness DeVoe characterizes as “matched pairs” in applying his price subtraction methodology are not “matched” in any meaningful sense. For example, RR-1 in Swisshome consists of two side-by side 1/10 acre lots located along the main highway in the historical developed section of Swisshome. DeVoe Appraisal at 150. By contrast, the other half of this “matched pair” (RR-2) is a 7-acre plot outside of the main area of Swisshome and located further from the road. DeVoe Appraisal at 151-52. Witness DeVoe does not offer any evidence regarding the topography or other characteristics of the two properties that might support a conclusion that they are in any sense a legitimate “matched pair.” Importantly, these two sets of data draw from different markets and market areas. The buyers of the Swisshome lots are not likely the buyers from Greenleaf or Deadwood properties.

Third, witness DeVoe offers no evidence whatsoever that the purchasers of the larger lots in his matched pair analysis considered the value of a “base homesite” separately from the value of the land, or that their intention was to pay a substantial price for a “base homesite” and a minimal amount for the additional acreage conveyed to them. For example, in witness DeVoe’s matched pair in Swisshome, there is no support for his assertion that either the market or the purchaser of the 7- acre site (RR-2) assumed — as witness DeVoe does — that \$65,000 of the purchase price represented the value of a homesite and \$35,000 the value of “excess” land “more oriented towards agricultural and/or open space.” DeVoe Appraisal at 71. Indeed, the 7- acre lot is zoned for two-acre home sites, not 0.25-acres (as witness DeVoe’s calculations assume), theoretically allowing for subdivision of that parcel. Nor was there any indication that the market or the purchaser of the larger parcel in Deadwood (RR-4) assigned a value to the homesite separately from the land. Indeed, if one compares the larger lots in the two matched pairs, one can see that the purchaser who paid \$135,000 for 8.11 acres in Deadwood paid a little

more than \$35,000 for one more acre than the purchaser of the 7.05 acre parcel in Swisshome, who paid \$100,000 for his lot. DeVoe Appraisal at 147. Nor can this disparity be explained by a more valuable homesite in Deadwood, since the purchaser of the smaller 0.75 acre lot in Deadwood (RR-3) paid \$75,000, less on a per-acre basis than the purchaser of the smaller double-lot in Swisshome paid for 0.23 acres (RR-1). DeVoe Appraisal at 147.

Table 3: Examples of Matched Pairs in Lane and Coos Counties

Sale	Seller	Buyer	County	Sale date	Sale price	Size (acre)	Price/acre
2005-066439	INGALLS RANDALL J & JANICE M	EISLER DAVID	LANE	8/24/2005		9.86	
2005-071466	CUMMINS VICTORIA	LOVELL EDWIN A & DIANA K	LANE	9/9/2005		9.85	
2005-10049	WINTERS, ALLEN L. & PATRICIA R.	TRAIL, DANIEL E.	COOS	7/7/2005		0.33	
2005-17448	REEDSPORT ASPHALT PAVING, INC.	SURBER, JAMES L. & JANET L.	COOS	11/15/2005		0.77	

Table 3 shows what matched pairs of comparable land sales in Lane and Coos Counties might look like. However, even the apparent similarity of the pairs of land sales depicted in Table 3 would not support a conclusion that they were “matched pairs” absent further inquiry to determine other similarities (or differences) between them.

Fourth, witness DeVoe’s assertion that these four dissimilar properties in Swisshome and Deadwood were the only “matched pairs” of comparable sales that he could identify anywhere along the right-of-way of the Feeder Line Segment (DeVoe Appraisal at 166, 169, 173-74) is not credible. Indeed, I found another comparable sale involving the purchase of 6.78 acres in Swisshome for \$100,000 in September 2007 (the same month in which the larger comparable sale presented by DeVoe in Swisshome took place). This transaction would be much more appropriate for consideration as a “matched pair” with the 7-acre sale relied upon by witness DeVoe. Witness DeVoe’s 7-acre comparable sale provides further support to the residential land

value that my appraisal assigned in Swisshome at [] per acre. Moreover, as my appraisal shows, there is no shortage of comparable sales in the other communities along the Feeder Line Segment (as witness DeVoe claims).

Fifth, even if witness DeVoe's application of the so-called "base homesite methodology" in the community of Swisshome were otherwise valid (and, as points 1 through 4 above show, it was not), the resulting per-acre value for "excess" land in Swisshome cannot legitimately be applied to residential property in other communities along the Feeder Line Segment. Witness DeVoe contends that his failure to identify matched pairs of residential land in each community for analysis under his base homesite methodology "is judged to be of little consequence because although the location is different the market characteristics are essentially the same" See, e.g. DeVoe Appraisal at 166, 169, 174 (emphasis added). This assertion reflects a total lack of understanding of the residential real estate market in the communities along the Feeder Line Segment. As my appraisal shows, the per-acre value of residential land varies widely from community to community along the Feeder Line Segment. See Attachment 1 at 9-11, 13-14, 17-20, 24-27 For example, the comparable sales data that I identified in my appraisal indicate that the value of rural residential property is approximately [] in Coos County (Land Use 27); [] in Lane County (Land Use 1); and [] in the community of Lakeside (Land Use 26). Witness DeVoe's analysis fails to take account of these important differences, and assigns to residential land in every community the exact same value (based upon his faulty "base homesite methodology") as he calculated for residential acreage in Swisshome. This resulted in a massive understatement of the value of residential property, because the per-acre value of such property in Swisshome ([]) is the lowest of any community along the Coos Bay Subdivision. Witness DeVoe's failure to take account of

differences in residential land values in each community, alone, renders his appraisal of residential property unreliable.

The impact of witness DeVoe's application of his base homesite theory and methodology was to set the base value of all the residential land – including substantial waterfront residential acreage — at only \$[]. (He then discounted this base value further to take account of his faulty judgment regarding the rights reserved by SPT.) By contrast, my appraisal, which is based upon proper implementation of the ATF methodology and comparable sales data reflecting the value of residential property in each individual community, values the residential property along the line at [].

C. Witness DeVoe's Conclusion That Virtually All Forested Land Along The Feeder Line Segment is "Worthless" Is Patently Incorrect.

In addition to the general methodological problems with DeVoe's appraisal, the shortcomings with DeVoe's appraisal become apparent when considering the sheer amount of land that is assigned \$0 value: 1,466.89 acres out of 1,741.52 acres total, or 83%. DeVoe Appraisal at 76. A list of the sections, mileposts, and values assigned by witness DeVoe is attached as Attachment 4.

Most of the land that witness DeVoe appraised at \$0 value is land that he categorizes as "Forest Nominal," or Valuation Unit 3. This Valuation Unit accounts for more than 1,000 acres, or 59 percent of all land along the Feeder Line Segment. According to witness DeVoe, "essentially no value is judged to exist" for any of this forested land. DeVoe Appraisal at 87. This judgment is not based upon an ATF analysis of the subject property — or, for that matter, on application of any other recognized appraisal methodology. Instead, witness DeVoe simply asserts that the subject land would not, in any instance, improve access to abutting landowners.

Id. Witness DeVoe also claims that this land has no value because "abutting lands are forest-

oriented properties that have no likely use for the subject due to its lack of timber rights, pipe and communication line easement and presence of ballast.” *Id* None of these reasons provides a basis for assigning \$0 value to the subject land.

1. The Subject Land Could Improve Access for Abutting Landowners.

Witness DeVoe explains his *assumption* that none of the 1,000 acres in Valuation Unit 3 has any utility by stating: “[i]t is *understood* that all of the abutting lands have existing access and no likely situations were uncovered where the subject would offer a significant benefit to abutting properties in terms of accessibility.” DeVoe Appraisal at 87. Witness DeVoe does not explain where this “understanding” comes from, and this “understanding” is demonstrably incorrect. In those cases where the subject land bisects large forest holdings, the subject land could be useful to the surrounding owner as a logging road, for which the presence of ballast would be a benefit rather than a problem. The subject land is particularly well suited for conversion to a road, since the land has already been cleared and has ballast. The subject land would also allow owners of bisected holdings contiguous ownership of their land, so that one portion of the bisected land could be easily accessed from the other without trespassing on another person’s land.

Even in those areas where the subject lies entirely along preexisting roads, the notion that there would be no demand for forest land that lies along a preexisting road is contrary to reason and market data. Unless the abutting landowner secured the land along the preexisting road, that owner would derive no benefit from the access that the road might provide. Furthermore, there is no shortage of comparable sales for similar land with road access. *See, e.g.*, Attachment 1 at 10, 13,-15.

Fundamentally, witness DeVoe ignores the issue of control – the primary reason why abutters often buy land. Abutting property owners derive value from not having someone else

use land next to them in undesirable ways. For the over 100 years the subject railroad has been in operation, abutting landowners have had no opportunity to acquire control over this land. Acquisition of the CORP right-of-way would be an opportunistic purchase for many of the abutting landowners.

2. Forested Lands Along the Subject Have Utility as Timber Property.

Witness DeVoe also attempts to justify his "Forest Nominal" designation based on his assumption that the subject land would have no utility to adjoining "forest-oriented properties . . . due to its lack of timber rights." DeVoe Appraisal at 87. Witness DeVoe's assumption that the subject has no value as timber property is incorrect for two reasons:

- As witness Cecil shows, CORP does own the timber rights in Douglas County, which it repurchased from Union Pacific (UP), so witness DeVoe's assumption that there is no value to abutters as timber land is incorrect in Douglas County. This error affects 278.79 acres, or 27% of the land witness DeVoe characterizes as "Forest Nominal," in addition to 7.71 acres characterized as "Forest Desirable." DeVoe Appraisal at 93-95, 112.
- If there were harvestable timber on the property in Lane or Coos Counties it would be a simple matter for the adjoining landowner to purchase the subject land and the timber rights from UP, which has not exercised any of its timber rights in the years since the rail line was conveyed to CORP. See Attachment 1 at 29-30.

Nor does the existence of the pipeline and communication easements have any relevance to the value of timber property. As witness Cecil testifies, those easements have never been exercised in the fourteen years that CORP has owned the Line, and UP is unlikely to use them in the future. Cecil V.S. at 8-9. Indeed, DeVoe admits that the subject property "does not have reasonable potential for pipeline or communication line uses." DeVoe Appraisal at 11. Even if there were a possibility that those easements might be used in the future, the presence of such facilities would not preclude harvesting timber on the subject land (or using the subject property in connection with harvesting activities on adjacent land). Thus, they would not have any bearing on the subject's utility to adjoining forest properties.

Moreover, the fundamental notion that forested land is worthless in Oregon, where the timber industry is a leading component of the economy, is simply not plausible. For example, witness DeVoe's valuation section 181 represents 46.97 acres of forest property between MP 727.97 and MP 730.56, which bisects a large tree farm owned by Rosboro USA, "one of the largest fully-integrated forest products companies in the industry"² DeVoe Appraisal at 94. Witness DeVoe's valuation section 192 likewise represents 24.57 acres of forest property between MP 735.71 and MP 737.04, which bisects a large tree farm owned by Roseburg Resources Co., whose line of business is timber tract operation. DeVoe Appraisal at 94. The subject is most similar to the land on either side of it. If property of the type represented by the subject property were of no utility to these companies, they would not have purchased land on either side of the subject. It is only logical that these companies would want to purchase the corridor property that bisects their holdings for all the reasons discussed above.

In any event, witness DeVoe's extraordinary claim that more than 1,000 acres of forested land would have absolutely no utility or value to an adjoining landowner — without any supporting market data — lacks credence. That's what comparables are for — to determine the value of property, whether low or high. While witness DeVoe purports to identify limited market data regarding timber land along the Feeder Line Segment, he proceeds to ignore that data, saying "[a]lthough the market data presented here has little direct relevance to this Valuation Unit, it was judged worthwhile to include [] to exemplify the range of ATF values to help put the nominal value conclusion in perspective." DeVoe Appraisal at 109. Rather than putting his "0" valuation "in perspective," even the limited comparable sales data presented by witness DeVoe shows that his across the board declaration that such land is "worthless" is

² Rosboro U.S.A., *Company Profile*, at <http://www.rosboro.com/thecompany/profile.html>.

contradicted by the market. In short, witness DeVoe's contention that forested land constituting more than half of all of the property along the Feeder Line Segment is "worthless" is supported by nothing other than his say-so

3. Witness DeVoe Misclassifies Subject Land as "Forest Nominal" in Order to Minimize His Appraisal.

Much of the land that witness DeVoe has classified as Forest Nominal is misclassified. In many instances, forested property located along existing roads is suitable for residential or other uses, and is therefore more appropriately appraised as "residential" property. For example, witness DeVoe acknowledges that private or individual owners own land abutting his valuation sections 20, 36, 40-42, 55, 60, 67-69, 76, 79a, 93a, 98, 106, 117, 122, 126, 128, 134, 137, 150, 153, 156, 178-180, 193, 196, 217, 218a, 220, 221, and 225. Many of those adjoining parcels already have residences. Yet, in each instance, witness DeVoe simply declares the property to be "Forest Nominal" without any analysis of its potential value as a residential home site. DeVoe Appraisal at 89-95. Witness DeVoe likewise classifies as "Forest Nominal" – and assigns "0" value to – several parcels where one side of the subject lies along a road and the other side backs up to a national or state forest. *See, e.g.*, DeVoe Valuation Sections 93a, 102, 106, 108; DeVoe Appraisal at 89-95. A more in-depth discussion of specific examples where witness DeVoe incorrectly classified desirable land as "Forest Nominal" is set forth below.

For example, out of 1,137 acres of forest land, he assigns \$0 value to 1,032 of those acres. DeVoe Appraisal at 76. The other 105 acres witness DeVoe classifies as "Forest Desirable," which DeVoe describes as being "marketable to abutters . . . due to being residentially oriented, small in size and/or being bisected by the subject property." DeVoe Appraisal at 111. This distinction is non-sensical; as discussed above, much of the abutting land along the right-of-way that witness DeVoe classified as "Forest Nominal" is likewise bisected by

the subject property, residentially oriented, or small in size. *See, e g* , DeVoe Valuation Sections 40, 41, 56, 57, 117, 156, 181, 192; DeVoe Appraisal at 89, 91, 93, 94. As in the Forest Nominal Valuation Unit, witness DeVoe does not explain why subject land abutting residential property should not itself be classified as residential.

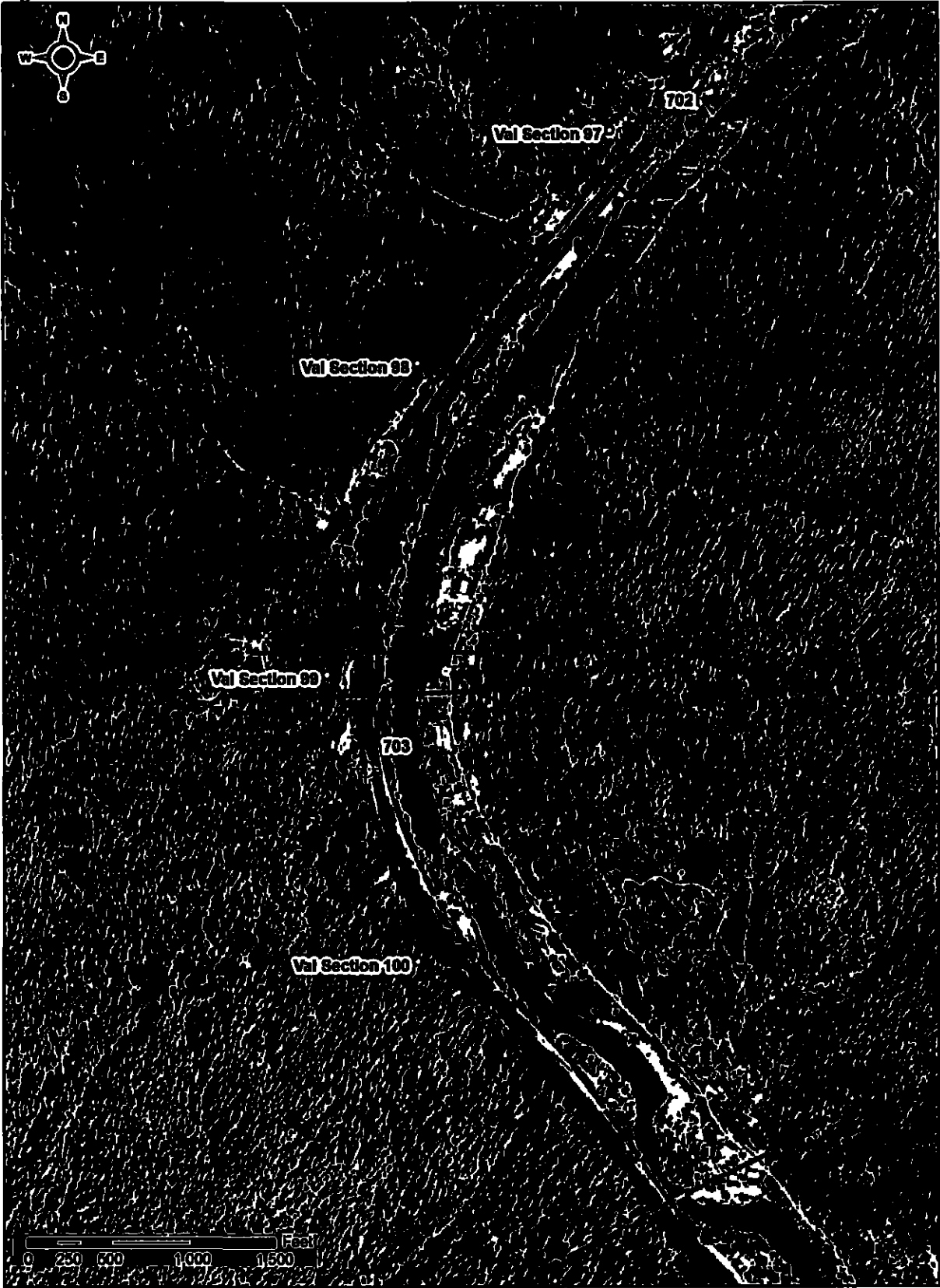
Witness DeVoe's mischaracterization seems particularly egregious when considering stretches of subject land where DeVoe alternates valuation categories, such as in Brickerville and Mapleton, which I discuss below. The characterization of the entire area is questionable but just the 1½ mile stretch from MP 702.14 to MP 703.6 serves to illustrate the lack of logic or consistency in witness DeVoe's classifications: over this stretch of right-of-way, DeVoe parses the subject property into four alternating valuation sections. The first 1/10 mile is classified Residential, the next half mile is classified Forest Nominal, the next 0.06 miles is classified Residential and the last ¾ mile is classified Forest Desirable.

Table 4: Example of Mischaracterized DeVoe Valuation Sections

DeVoe Section#	MP Start	MP End	DeVoe Val Unit	Acres	DeVoe Appraised Value
97	702.14	702.25	7 Residential	1.38	\$5,175.00
98	702.25	702.80	3 Forest Nominal	6.67	\$0.00
99	702.80	702.86	7 Residential	0.69	\$2,587.50
100	702.86	703.60	4 Forest Desirable	8.97	\$1,668.50

Figure 1 below is an aerial view of the property referred to in Table 4, with the boundaries between witness DeVoe's classifications marked in red. It is apparent that the different classifications assigned by DeVoe to these substantially similar sections of land are arbitrary.

Figure 1 - Aerial View of DeVoe Sections 97-100



The only justification that witness DeVoe offers for classifying sections 98 and 100 differently than sections 97 and 99 is that there are currently houses located next to the subject at sections 97 and 99. However, witness DeVoe does not explain why the subject at sections 98 and 100, which is topographically similar to sections 97 and 99, and enjoys the same road access, would not also be desirable for residential use.

In the end, witness DeVoe assigns a total gross liquidation value of only \$26,370 to the 1,137 acres of forested land along the 111-mile Feeder Line Segment (including many acres that would be suitable for residential use). This is not a reliable valuation.

D. Witness DeVoe's 50% Reduction In the Value Of Almost All Property Along The Feeder Line Segment On Account Of Ancillary Rights Reserved By SPT Is Unsupported.

Witness DeVoe further reduces his estimated NLV for the right-of-way land underlying the Feeder Line Segment by applying a 50% discount to virtually all of the land to which he otherwise assigned any value. *See DeVoe Appraisal at 157, 166, 169, 174, 192, 209, 224, 240.*³ Witness DeVoe attempts to justify this across-the-board discount on the grounds that certain ancillary rights retained by SPT in the original deeds conveying the land underlying the Coos Bay Subdivision to CORP greatly diminish the utility of CORP's right-of-way land to any potential purchaser. Without any attempt to quantify the real-world market effect of the retained easements, witness DeVoe asserts that a "rate of one-half [of calculated value] is judged to be most appropriate to the analysis considering that the subject is so heavily encumbered by the SPTC easements/reservations." *DeVoe Appraisal at 169.* Even where witness DeVoe considers that "the limiting SPTC easement is significant but overly burdensome for [the] property type,"

³ DeVoe does not apply a 50% discount to his base value for two acres in Valuation Unit 5 and eleven acres in Valuation Unit 12, where DeVoe simply asserts a value of \$5,000 per acre for desirable waterfront residential property. *DeVoe Appraisal at 125, 177.* DeVoe also discounts forest property and farmland by more than 50% to 100% without explaining how the SPT retained rights might affect such uses. *DeVoe Appraisal at 113, 142.*

he discounts the ATF value by 50%. *See DeVoe Appraisal at 169.* As the following discussion, and the testimony of witness Cecil, demonstrate, witness DeVoe's across-the-board discount is unsupported by his analysis or by real-world experience.

As witness Cecil explains, the rights reserved by SPT included timber rights, mineral rights, and a perpetual exclusive easement on that portion of the right-of-way within 50 feet of the center line of the track for possible pipeline or communications (fiber optic) facilities (the "Communications and Pipeline Easement"). In addition, the original deeds from SPT to CORP provided that "No permanent building, structure or fence shall be erected or maintained by Grantee on or over the Communications and Pipeline Easement Property which would obstruct or interfere with any then existing or planned Microwave Facilities or other communications facilities or pipelines of Grantor located on or planned to be located on the Communications and Pipeline Easement Property." *See V.S. Cecil at 2.*

Witness DeVoe's discount cannot be justified on the basis of the timber rights reserved by SPT. As witness Cecil shows, CORP re-acquired the timber rights for Douglas County from UP in 1998. The price paid by CORP to acquire the timber rights in Douglas County constitutes a highly relevant "comparable sale" for purposes of determining the appropriate amount of any reduction in value attributable to the remaining SPT timber rights in Lane and Coos Counties. As I explain in my appraisal, the price paid by CORP for the Douglas County timber rights does not support a discount of 50% in land values in Lane and Coos Counties on account of the timber rights.

Nor do the the mineral rights and communications and pipeline easement reserved by SPT warrant the 50% discount imposed by witness DeVoe. The water rights are of no value. The mineral rights are likewise of no value as no oil or gas has been discovered near the Line

Furthermore, as witness DeVoe acknowledges, “[t]he subject property as encumbered does not have reasonable potential for pipeline or communication uses.” DeVoe Appraisal at 11.

Because there is no “reasonable potential for pipeline or communication uses,” there is likewise no danger that the building restriction could come into play in the future. In any event, as witness Cecil explains, the no-build provision only prohibits the construction of permanent buildings or structures within 50 feet of the center line of CORP’s right-of-way if such buildings or structures “would obstruct or interfere with any then existing or planned Microwave Facilities or other communications facilities or pipelines of [SPT] located on or planned to be located on” the CORP right-of-way. Because there have never been any “existing” or “planned” SPT pipeline or communications facilities along the Coos Bay Subdivision right-of-way (except between Milepost 652 and Milepost 654), the rights reserved by SPT do not limit the ability of potential purchaser’s to develop right-of-way land. As witness Cecil shows, actual right-of-way land sales by CORP confirm that the SPT reservations have never resulted in a discount to “fair market value ”

Witness DeVoe cites only one piece of market evidence to support his blanket discount: a 2002 CORP sale of industrial land in Noti to Swanson Brothers Lumber Co. DeVoe Appraisal at 209. DeVoe compared the 2002 CORP sale to a 2006 sale and a 2007 sale to conclude that the 2002 CORP sale was executed at a 50% discount to ATF. However, as witness Cecil shows, a contemporaneous appraisal of the property at the time of the 2002 sale demonstrates that contrary to DeVoe’s *assumption*, the 2002 sale to Swanson Brothers Lumber Co. was done at a 152% *premium* over ATF.

A number of the ATF sales used in my report included portions within the “no build” area. For instance, in Reedsport Land Use 19 (Rex Appraisal at page 17) includes three such

sales. Comparable Sale 2006-6982 sold for [] per acre in March 2006. This sale included 25 feet of the total 125 feet of depth within the “no build” area. Comparable Sale 2006-9676 sold for [] per acre in April 2006. This sale includes 20 feet within the “no build” area. Comparable Sale CORP-14861 sold in September 2005 for \$146,341 per acre and includes 10 feet within the “no build” area. Comparable Sale 1997-09114 (not used for valuation of this segment) sold in April 1997 for [] per acre and includes 20 feet within the “no build” area. One better located sale was included in the valuation of this land use and it sold for \$213,047 per acre. As shown, it is not possible to claim that the SPT retained rights adversely impacted these sales.

In the valuation of Land Use 20 (Rex Appraisal at page 18), two CORP sales were used. Comparable Sale 2006-16356 sold in June 2006 and did not contain any area within the “no build” area. However, Comparable Sale CORP-15119 sold in December 2006 for a higher price of [] per acre. This sale contained 15 to 25 feet within the “no build” area. Again, no evidence that the SPT retained rights impacted market value.

In Lakeside Land Use 26 (Attachment 1 at 20), the value concluded is [] per acre based on [] residential sales, none of which were from CORP. Significantly, a 25-foot wide strip was purchased from CORP in February 2006 for [] per acre. This strip is entirely within the “no build” area. Again, and even more convincingly, no discount is evident due to the SPT reservations.

Witness Cecil’s testimony confirms that the rights reserved by SPT have not materially affected the price that CORP has been able to obtain for right-of-way property that is subject to the SPT reservations. To the contrary, CORP has consistently sold such land at prices at or above “Across-the-Fence” value.

III. THE DEVOC APPRAISAL CONTAINS NUMEROUS OTHER FLAWS THAT RENDER IT COMPLETELY UNRELIABLE.

Further specific examples of serious errors and failures of judgment in witness DeVoc's appraisal include the following:

- Witness DeVoc assigns \$0 value to all land in Lakeside, OR, a residential community that lies between the Oregon Dunes National Recreation Area along the Pacific Ocean and Tenmile Lake. DeVoc Appraisal at 227-28. CORP has made two prior land sales at or above market value in this area.
- Witness DeVoc assigns \$0 value to all land in the City of Veneta, OR, a community in which the comparable sales data indicate an ATF value of [] per acre for some residential property. DeVoc Appraisal at 161-63; Attachment 1 at 25-26. Again, CORP has made several recent sales in this area.
- Witness DeVoc assigns a \$0 value to desirable land in and near Hauser, OR, including almost 100 acres with potential residential use next to the Oregon Dunes and 2.4 commercial acres in Hauser. DeVoc Appraisal at 84-85.
- In Brickerville and Mapleton, OR, witness DeVoc parses desirable residential land along the Siuslaw River into alternating sections of "Rural Residential" and "Forest Nominal" property to which he assigns \$0 value with no explanation as to why he believes that land situated between two residential lots is worthless. See DeVoc Valuation Sections 101-108, 124-128, Attachment 4; DeVoc Appraisal at 83, 92, 146.
- In Reedsport, OR, DeVoc takes the nonsensical position that CORP's prior sales of industrial land along the Line provide evidence that there is limited demand for the subject property and appraises the subject at 50% of the value indicated by his own comparable sales data. DeVoc Valuation Sections 202-205, 207, 209; DeVoc Appraisal at 214, 224.

The problems with witness DeVoc's appraisal are not limited to these areas. Indeed, the Majority of witness DeVoc's appraisal has severe credibility and unjustified undervaluation problems. For example, DeVoc claims that Siltcoos Station, a city along "the Oregon Coast's largest lake" with many "retirement and vacation homes" is "*a backwater of little or no economic viability.*" DeVoc Appraisal at 31 (emphasis added). In this area, the corridor has three to five miles of *lake frontage along a navigable water body*, yet DeVoc assigns this

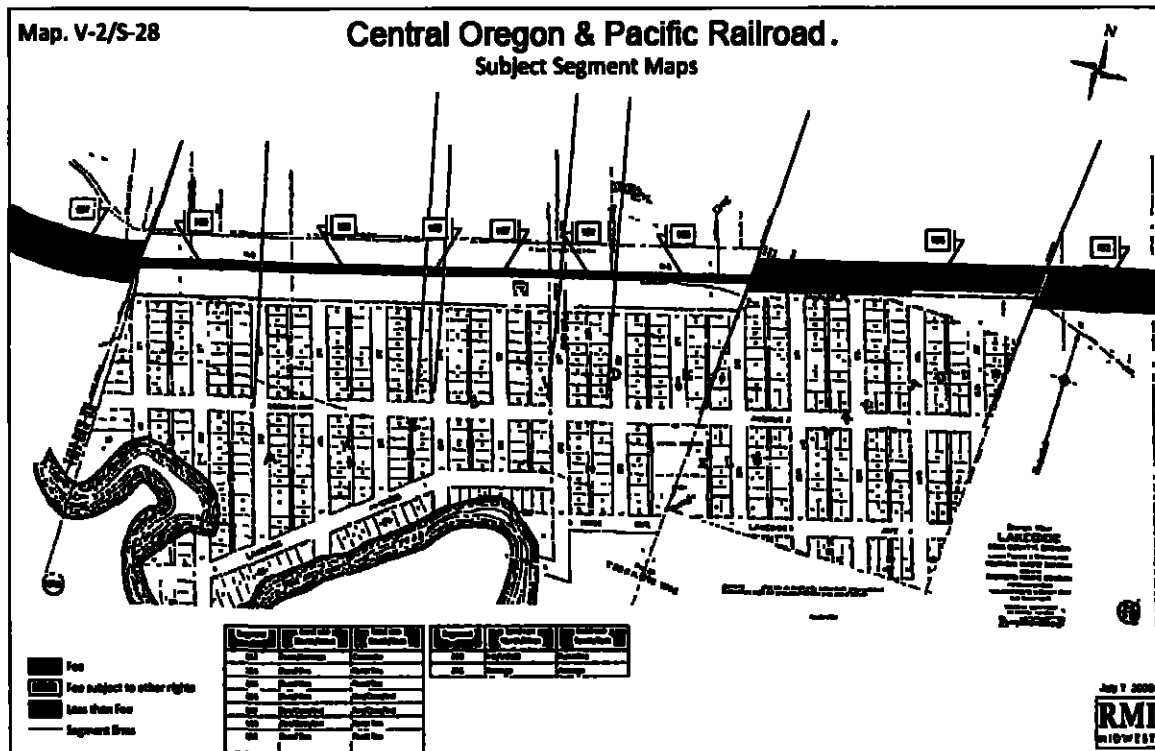
property \$0 value. The following are merely additional illustrations of DeVoe's faulty judgment in appraising the land along the Feeder Line Segment.

A. Subject Land in the City of Lakeside is Not Worthless.

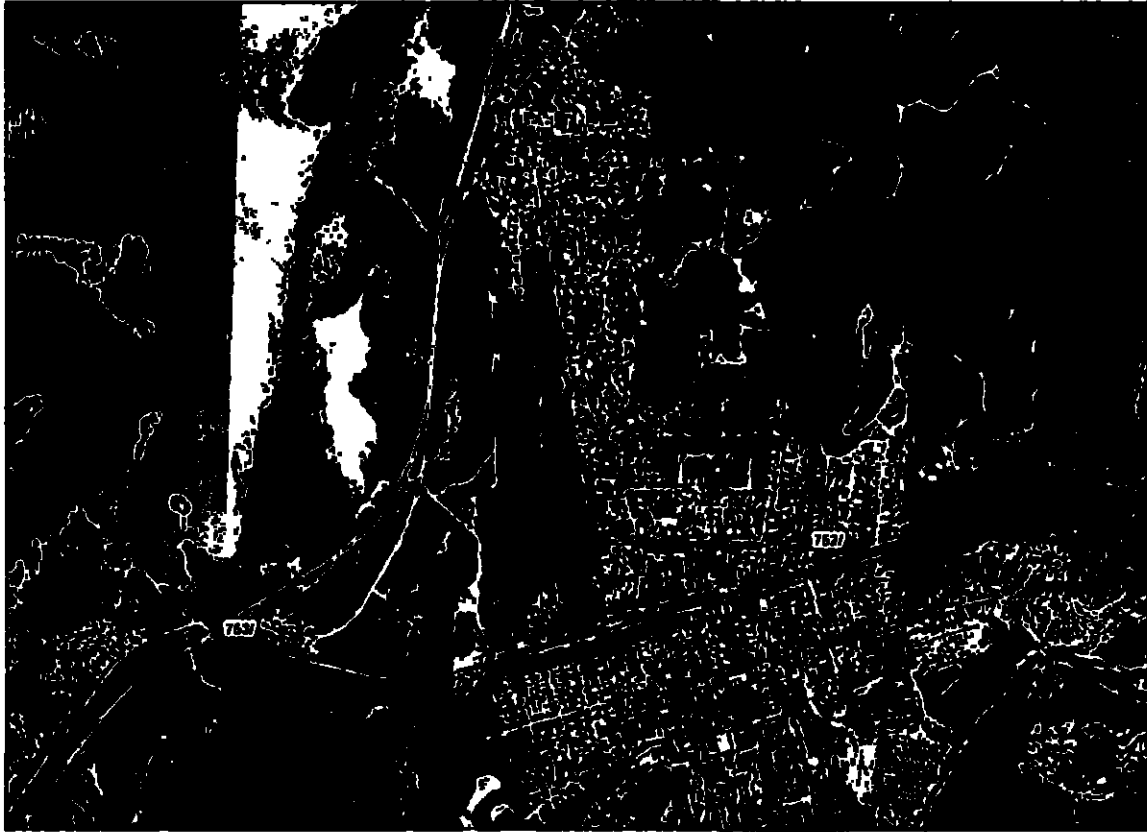
Witness DeVoe assigns \$0 value to all of the subject land in the City of Lakeside. DeVoe Appraisal at 226, 228. He arrives at this conclusion on the basis of a conversation with a real estate agent selling lots in a subdivision in the area developed in 2005 "who indicated that she might have to *give a couple away*." DeVoe Appraisal at 41 (emphasis added). Apparently content to rely on this tongue-in-cheek statement, witness DeVoe does not bother to identify any comparables in Lakeside to support assigning all land in the City of Lakeside a \$0 value.

Witness DeVoe also justifies his \$0 valuation in Lakeside by claiming that "[s]ignificant portions of the subject line are only 40 feet wide through the city." DeVoe Appraisal at 227. However, of the 23 acres of subject land in Lakeside, only 2.66 acres are so narrow. DeVoe Valuation Sections 239-240, 242-245, DeVoe Appraisal at 227; *see also* Val Map V-2/28 & V-2/S-28, Addendum D. Indeed, this small section is so narrow because CORP previously sold all of the land abutting this portion of the Line, including a narrow 25-foot strip of land in 2006 burdened by the very SPT encumbrances that witness DeVoe says make the land worthless (further undercutting his \$0 valuation estimate). More importantly, the remaining 20+ acres of the subject land in Lakeside range from 150-200 feet wide, which is more than deep enough to site an independent homesite on in most areas. DeVoe Valuation Sections 236-238, 246, DeVoe Appraisal at 227; *see also* Val Map V-2/28 & V-2/S-28, Addendum D. Indeed, as can be seen in the detailed Val Map (V-2/S-28) below, most of the subject land in Lakeside lies at the end of residential streets, i.e. 12th, 13th, 14th, & 15th streets. Such land is suitable for cul-de-sac residential use, making the subject property some of the most desirable residential property in Lakeside.

Lakeside Valuation Map



Witness DeVoe himself observes that the City of Lakeside is “located along Tenmile Lake, one of Oregon’s largest and most popular recreation lakes” as well as the Oregon Dunes area, “only minutes from sand dune access as well as clamming, crabbing and ocean fishing.” DeVoe Appraisal at 39. In spite of its idyllic location, DeVoe claims that “the subject offers virtually no economic utility, mainly due to encumbrance limitations and market limitations.” DeVoe Appraisal at 227. This statement reveals a basic misunderstanding of what we do as appraisers: use market data reflecting sales of comparable properties to determine an estimate of the market price for a property. When market conditions are poor, the effect of those conditions will be reflected in comparable sales data. Rather than offer an unsupported opinion that land in this tourist and bedroom community is worthless, witness DeVoe should have considered the abundant comparable sales in this area.

Figure 2: Lakeside

I estimate the value of subject land in Lakeside to be []. DeVoe's \$0 valuation for the same land is absurd.

B. Subject Land in the City of Veneta is Not Worthless.

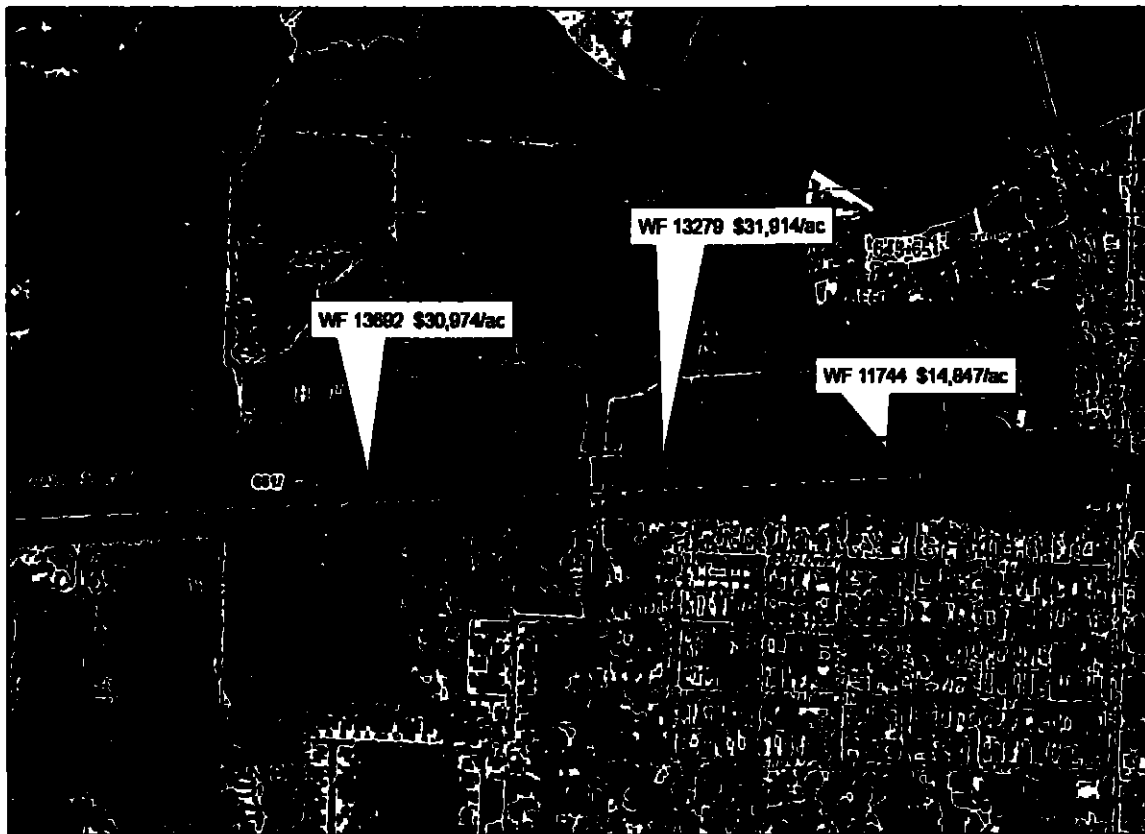
The City of Veneta, located just a few miles west of Eugene, is a community of over 3,000 people. Again, witness DeVoe presents no comparable sales for property in this city. Veneta is a community in which the comparable sales data indicate an ATF value of [] per acre for some residential property. Attachment 1 at 25-26. As witness DeVoe recognizes, the properties abutting the subject in Veneta are zoned for Residential, Community Commercial, and Highway Commercial uses, with some portions of the subject property abutting public parks and facilities. DeVoe Appraisal at 160. The land at issue lies from MP 659 to MP 661.29 and is divided by witness DeVoe into nine appraisal sections (numbered 23, 25, 26, 27, 29, 31, 33, 34,

and 35). DeVoe Appraisal at 162; Attachment 4. Witness DeVoe claims that the almost 43 acres of otherwise desirable land “offers virtually no economic utility” because the City of Veneta has sub-zoned this land for “Greenway – Open Space” use. DeVoe Appraisal at 160-63. This conclusion is not supported by the market evidence.

If the railroad ceased operating along the Line, the railroad could petition the City to lift the ordinance. If the City refused, it would have to purchase the land at its constitutional minimum value. In my experience, arms-length purchases in rails-to-trails and other public use situations are usually at prices of 110% to 130% greater than ATF. Sale of this land to the City of Veneta would solve one of the challenges identified in the City’s parks and recreation master plan by allowing for pedestrian and bicycle facilities and removing a “substantial barrier[] from park and recreation facilities for children, the elderly, etc.” City of Veneta, *Parks, Recreation, and Open Spaces Master Plan 25* (1998), <http://www.ci.veneta.or.us/pdf/ParksandRecreationPlan.pdf>.

Moreover, as witness Cecil shows, CORP has sold several parcels of land along its right-of-way in Veneta over the past several years. Notwithstanding the fact that the parcels were located within the so-called “Greenway” subzone, CORP obtained an average price of more than [] per acre in those sale transactions. Figure 3 below is an aerial view of Veneta with these sales mapped out. This real-world market evidence fatally undercuts witness DeVoe’s judgment that Veneta’s “Greenway” zoning regulations render all of the land along CORP’s right-of-way in Veneta worthless

Figure 3 - Aerial View of Veneta with CORP Sales



I have appraised the subject land in the City of Veneta at []. CORP has made several recent sales along this portion of the corridor that support the ATF value I arrived at and not a \$0 value. See Attachment 1 at 24-25. That witness DeVoe concludes that all of the subject land in Veneta “offers virtually no economic utility” shows that his appraisal is unreliable.

C. Subject Land In And Near Hauser Is Not Worthless.

Witness DeVoe also assigns \$0 value to almost all the subject land from Hauser to the end of the subject line near Cordes, with the exception of a small 1.72 acre parcel that he concedes might add some value to the residential properties abutting it. DeVoe Valuation Section 274, DeVoe Appraisal at 173. DeVoe judges the remainder of the almost 100 acres, including a 2.25 acre portion along Hauser Depot Road in the commercial district of Hauser and potential residential land with dune access, to be worthless, assigning these sections to Valuation

Unit 2 – Nominal Values. DeVoe Valuation Sections 270, 271, 273, 275-277, DeVoe Appraisal at 84-85. Witness DeVoe describes the sections in Valuation Unit 2 (Nominal Values) to have “no likely value to abutters,” as “abutting lands generally consist of areas of no value in the context of the disposition of the subject . . . (i.e. National Forest, Oregon State Lands, Coos County, etc.) as these are known to almost never purchase abutting areas of former right of way.” DeVoe Appraisal at 82. This statement is contradicted by DeVoe’s own handwritten notes (provided in his workpapers): “if [the land] has access to Dunes[,] it has value.” DeVoe Notes, Attachment 6.

Not only does witness DeVoe not offer any comparable sales data to support these assertions, he does not provide any explanation to justify his wholesale devaluation of this area. Witness DeVoe merely offers short comments on the abutting properties in his definition of his Valuation Sections, stating, for example, that the 26 acre parcel next to his Valuation Section 275 (between MP 759.53 and MP 759.96) already has dune access. DeVoe Appraisal at 84. He apparently offers this non-sequitur to justify his \$0 appraisal on the grounds that the adjoining parcel would not be improved by the subject. However, this implicit judgment begs the question why a 10.82 acre parcel of land with dune access would not be desirable in its own right. (Aerial photographs of this area are included in my appraisal in Addendum B at 46.) Once again, witness DeVoe’s opinion is not supported by market data. The more reliable indicator of value is presented by comparable sales for this area. There is no market support for witness DeVoe’s appraisal of \$0 for the almost 100 acres of potential residential property situated along the Oregon dunes. The more reliable conclusion, supported by comparable sales in the area, is that these 100 acres of commercial and residential land next to the Dunes and the Pacific Ocean in this area is worth [].

D. Witness DeVoe Minimizes His Appraisal In Brickerville And Mapleton By Sub-Dividing Residential Land Into Alternating Sections Of \$0 Value.

While witness DeVoe did not engage in similarly wholesale devaluation of all the land in Brickerville and Mapleton as he did in Veneta and Lakeside, his errors in valuing the subject land in these communities are no less problematic. Again, witness DeVoe presents no comparable sales data whatsoever to support his valuations in Brickerville and Mapleton. What he did do was take residential land along the subject and, wherever the abutting land did not actually contain a residence today, created a separate Valuation Section for the subject and classified it as "Forest Nominal" with \$0 value (as previously discussed in section II.C.3, above). The error of this approach becomes especially apparent when considering the location of witness DeVoe's Valuation Sections through aerial views, as shown in Figure 1, above.

Witness DeVoe begins his valuation in Brickerville by classifying a 34.5 acre section of the subject as "Forest Nominal" property with \$0 value because some of this land abuts the U.S. National Forest (although he does admit that there are also 3 privately owned parcels also abutting this section). DeVoe Valuation Section 93a, MP 699.75-MP 701.62, DeVoe Appraisal at 91. Witness DeVoe does not explain why land with road frontage (Highway 36) next to the Siuslaw River and backing up to the National Forest land on the outskirts of Brickerville would not be suitable — indeed, desirable — for residential purposes. Witness DeVoe's assessment is especially questionable when considering that the adjoining property, 2.39 acres in DeVoe Valuation Section 94, at MP 701.62-MP 701.82, is categorized as residential because it abuts a 14.1 acre residential parcel on the right. Without any explanation, witness DeVoe alternates land classifications between "worthless" and residential land for the sections following: DeVoe section 96, 3.82 acres from MP 701.82 to MP 702.14, is categorized as Nominal (Valuation Unit 2) with \$0 value; DeVoe section 97, 1.38 acres from MP 702.14 to MP 702.25, is categorized

Residential; DeVoe section 98, 6.67 acres from MP 702.25 to MP 702.8, is categorized Forest Nominal with \$0 value, and DeVoe section 99, 0.69 acres from MP 702.8 to MP 702.86, is categorized Residential. See Table 5 below; DeVoe Appraisal at 83, 91, 145.

The following table shows how witness DeVoe parsed the subject property into alternating Residential and worthless Forest Nominal sections (Residential sections were assigned to Valuation Unit 7 and are shaded).

Table 5: DeVoe Valuation Sections from Brickerville to Mapleton

DeVoe Section#	MP Start	MP End	DeVoe Val Unit	Section Acres	DeVoe Appraised Value
93a	699.75	701.62	3 Forest Nominal	34.50	\$0.00
93b	700.40		1 No Value	0.14	\$0.00
94	701.62	701.82	7 Residential	2.39	\$8,962.00
95	701.90		1 No Value	0.14	\$0.00
96	701.82	702.14	2 Nominal	3.82	\$0.00
97	702.14	702.25	7 Residential	1.38	\$5,175.00
98	702.25	702.80	3 Forest Nominal	6.67	\$0.00
99	702.80	702.86	7 Residential	0.69	\$2,587.50
100	702.86	703.60	4 Forest Desirable	8.97	\$1,668.50
101	703.60	703.72	7 Residential	1.45	\$5,437.50
102	703.72	703.77	3 Forest Nominal	0.64	\$0.00
103	703.77	703.90	7 Residential	1.63	\$6,112.50
104	703.90	704.20	3 Forest Nominal	4.40	\$0.00
105	704.20	704.36	7 Residential	1.99	\$7,462.50
106	704.36	704.74	3 Forest Nominal	5.44	\$0.00
107	704.74	705.04	7 Residential	6.59	\$24,712.00
108	705.04	705.44	3 Forest Nominal	1.27	\$0.00
109	705.44	705.55	7 Residential	2.69	\$10,087.50
110	705.55	705.55	1 No Value	0.23	\$0.00
111	705.55	705.91	3 Forest Nominal	6.58	\$0.00
112	705.91	706.08	7 Residential	3.19	\$11,962.50

As Table 5 above shows, witness DeVoe parsed the subject right-of-way into alternating Residential and Forest Nominal sections in Mapleton as well. DeVoe Valuation Sections 101-112, MP 703.6-706.08; DeVoe Appraisal at 91, 145-46. Witness DeVoe's arbitrary parsing of the subject in this manner is not market supported. He offers no rationale for why he judges the

highest and best use of a timbered lot lying between two residential lots is to lie fallow, as his Forest Nominal \$0 valuation suggests. The only rationale offered for valuing the alternating sections as non-residential is that the abutting properties are not residences; this is not a valid justification when, as here, the subject land lies in between other residential parcels and is otherwise suitable for residential development. To arrive at his conclusions, DeVoe ignores what the ATF comparables tell him.

This unjustified segmentation of valuable land into random strips that purportedly have no value renders witness DeVoe's appraisal completely unreliable. The impact of witness DeVoe's arbitrary misclassification of subject land is that he values the 94.8 acres of land in Brickerville and Mapleton at \$84,167.50, or \$887.84 per acre. A more realistic, market supported appraisal would value this residential land in desirable communities, much of it waterfront property on the Siuslaw River, at [].

E. Witness DeVoe Does Not Support His Blanket 50% Discount From ATF Values Of Industrial Property in Reedsport, Especially Considering That Comparables Include CORP Sales Along the Subject Line.

Witness DeVoe offers two unsupported rationales for his assertion that the value of industrial land in Reedsport should be 50% of the ATF value. First, DeVoe says that he "judged [there] to be limited demand for the subject areas [of Reedsport industrial land] . . . due to the substantial supply of vacant industrial lands abutting the subject, which is largely related to the fact that in year 2006 CORP sold off its excess lands in this area." DeVoe Appraisal at 214. Second, witness DeVoe concludes that the ATF value indicated by his comparable sales applies to only a half acre parcel of the subject, with the remainder to be valued at 50% of the ATF value, "due to the more onerous presence of the SPTC easement." DeVoe Appraisal at 224. Neither rationale is supported by market data.

Witness DeVoe's first rationale based on his estimate of limited market demand is directly contradicted by the very comparable CORP sales in 2006 that he claims led to the excess supply of industrial land in the market. See DeVoe appraisal at 214. Where there are comparable sales in an area, appraisers need not (and should not) guess about the market effect of supply and demand; the price of comparable sales indicate where supply and demand meet in the market place. As witness DeVoe recognizes, there have been recent comparable sales of Reedsport industrial land near the subject; I have identified others. See DeVoe appraisal at 214; Attachment 1 at 17-18. Witness DeVoe fails to identify any change in this local market since those comparable sales took place that would warrant ignoring the ATF values indicated by comparable sales.

As discussed above, witness DeVoe's second rationale is based on an unsupported *guess* as to the effect of unutilized SPT rights. As witness Cecil demonstrates, there is no indication in the market data that these unutilized rights have had any effect whatsoever on the market price of CORP land. The best indicator of market reality is reflected in comparable sales data. Indeed, DeVoe's first comparable involved a sale of two non-contiguous parcels along the waterfront that are separated only by the line. DeVoe Appraisal at 216-217. The owner of those two parcels might be expected to be interested in purchasing the portion of the subject line, waterfront industrial property, that lies between the parcels in order to consolidate the holdings.

I have estimated the 9.72 acres of commercial and industrial land in Reedsport to be worth [] based on six comparable sales in the area. Attachment 1 at 17-18. My estimate is very close to witness DeVoe's ATF value estimate for the subject in Reedsport of [] (although DeVoe incorrectly determined the area to be 6.11 acres rather than the 9.72 acres CORP owns). DeVoe Appraisal at 224. However, witness DeVoe then discounts the ATF

value by 50%. *Id.* Without any market data showing that unused easements of the sort on the subject effect the market price of comparable land, witness DeVoe's estimate of a 50% discount remains an unsupported self-interested guess, making his appraisal unreliable.

IV. WITNESS DEVOE MAKES UNREALISTIC ASSUMPTIONS IN CALCULATING NLV FROM GROSS VALUE.

While the most significant errors in witness DeVoe's appraisal are encompassed in his determination of what he terms "adjusted base value," witness DeVoe employs many erroneous assumptions in his calculation of "net present value" from base value. DeVoe Appraisal at 71.

Witness DeVoe lists the factors he considers in this calculation as:

- 1) Pace of disposition/sales,
- 2) Cost a typical buyer would incur in disposing of the individual portions of the subject;
- 3) Interim income during disposition;
- 4) Administrative delay, and
- 5) Time/market factors.

DeVoe Appraisal at 71. Of these, the only significant factors that witness DeVoe considers are the pace of disposition and the costs of disposal. DeVoe Appraisal at 72-75. It is in calculating the impact of these factors that witness DeVoe makes unrealistic assumptions.

In determining the pace of disposition, or the sellout period, witness DeVoe states that "it is apparent that different disposition periods will be experienced by the subject Valuation Units, depending of [sic] types of abutting areas relative to the use potential offered by the encumbered subject." DeVoe Appraisal at 72. It is unclear what makes witness DeVoe's assumption "apparent," especially since it contradicts the experience of the experts that witness DeVoe interviewed. *Id.* Witness DeVoe ends up assuming that some property types, such as waterfront

residential and rural industrial, would sell within one year and others, such as forest and rural residential land in Lane County, would sell in five years.

In my opinion, witness DeVoe's assumptions are unrealistic and do not reflect how a purchaser for piecemeal disposition would discount the current market value of the properties, using a single realistic sellout period. In fact, potential buyers would consider an overall sellout period rather than employing DeVoe's unrealistic method of segmenting sellout periods by land use. Furthermore, witness DeVoe's multiple sellout period assumptions do not make any provision for current conditions in the real estate market. In my appraisal, I have estimated the sellout period for the corridor as a whole to be eleven years. *See* Attachment 1 at 39. Because of the current downturn in the real estate market, especially in the residential segment, I assumed that the first-year sales volume would be 50% of a typical year, and the second-year volume would be 75%. *Id.* I believe that this longer sell off period reflects current market conditions more accurately than the multiple timeframe assumptions made by witness DeVoe.

Witness DeVoe's estimate of the expenses associated with disposition of the right-of-way are also unfounded. For example, witness DeVoe deducted 2% from the base value for legal fees as a "cost likely to be incurred by a prudent *buyer* of the subject line." DeVoe Appraisal at 73 (emphasis added); *see also, e.g., id.* at 114, 126, 159. Witness DeVoe admits that this amount "is essentially impossible to accurately project." *Id.* at 73. More importantly, he does not explain why CORP, as the seller, would pay the buyer's legal expenses, which are reflected in market values. Witness DeVoe likewise offers no basis for subtracting the buyer's insurance costs from the base value, especially since as he notes, "[a] general liability policy would most likely be sufficient," a policy already owned by most likely purchasers. *Id.* at 74. Such insurance is not an expense against the real estate. Lastly, witness DeVoe's sales commission estimates of 10%

for urban areas and 15% for rural properties are extremely high; this amounts to a system wide sales cost of 11.68%. *Id.* at 74. Typical real estate commissions in the area are 5% for such large projects, and in many cases can be avoided by contacting and negotiating directly with adjoining property owners.

Mr. DeVoe chooses the antiquated method of accounting for the profit or return to the developer or buyer of the subject property through using a line item "profit" and then discounting using a "discount rate". While there are problems with such an allocation of profit, especially when the discount period varies, the differences in our two methods are not significant. I tested this by redoing DeVoe's present value calculations substituting \$0.00 for profit and then solving for the internal rate of return against his present value calculations. The indicated yield rate or internal rate of return was slightly above 18%. My yield rate as shown in my appraisal at page 41 is 18% plus 0.80% for real estate taxes.

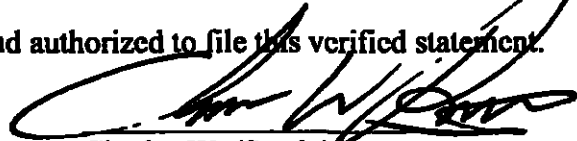
Even considering all the unfounded excess sales expenses used by DeVoe in his calculation, DeVoe's appraised net liquidation value actually incorporates a much smaller discount from the "adjusted base value" than my own discounted cash flow analysis does. As shown in Table 6, I took a more realistic approach and divided my ATF value on a pro-rata basis over his longest sellout period of five years, since it is not realistic or market supported to differentiate sellout periods by the various ATF land uses. I then deducted the expenses based on DeVoe's amounts. For instance the cost of sales at 11.68% is the weighted average of the cost of sales that DeVoe used. Table 6 then goes on to show that with the proper ATF value, and even using DeVoe's high expenses, an NLV of \$10,691,000 would be indicated as compared to my estimate of []. See Attachment 1 at 41.

**Table 6: Discounted cash flow and Net Liquidation Value
using RMI Midwest ATF values and DeVoe's Cash Flow assumptions**

		Year 1	Year 2	Year 3	Year 4	Year 5
Gross potential sales		\$ 4,912,322	\$ 4,912,322	\$ 4,912,322	\$ 4,912,322	\$ 4,912,322
Percent sold		85%	85%	85%	85%	85%
Likely sales		\$ 4,175,474	\$ 4,175,474	\$ 4,175,474	\$ 4,175,474	\$ 4,175,474
Less cost of sales @	11.68%	\$ 487,695	\$ 487,695	\$ 487,695	\$ 487,695	\$ 487,695
Insurance	0.40%	\$ 98,246	\$ 78,597	\$ 58,948	\$ 39,299	\$ 19,649
Legal	2%	\$ 491,232	\$ -	\$ -	\$ -	\$ -
Escrow fees	0.16%	\$ 6,681	\$ 6,681	\$ 6,681	\$ 6,681	\$ 6,681
Net Sales		\$ 3,091,620	\$ 3,602,501	\$ 3,622,150	\$ 3,641,800	\$ 3,661,449
Present value @	18.80%	\$10,690,820				
Rounded to		\$10,691,000				

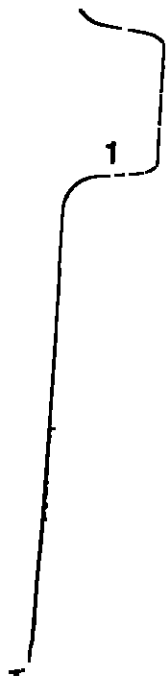
VERIFICATION

I, Charles W. (Sandy) Rex, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.



Charles W. (Sandy) Rex

Executed on 29 August, 2008



REDACTED

2



CHARLES W. (SANDY) REX III, MAI
QUALIFICATIONS

BUSINESS

ADDRESS

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PROFESSIONAL

ORGANIZATIONS

Member of the Appraisal Institute,
MAI designation, Certificate No 6853

EXPERIENCE

Partner & co-owner of RMI Midwest, 1992-present

Education consultant, Appraisal Institute, 1992-1993

President of Rex-McGill, Inc , 1987-1992

President of Pinel, Rex & Carpenter, Inc , 1986 to 1987

Appraiser with "Rex-McGill," beginning in 1971

Specializing in the valuation and analysis of corridors and other railroad properties, as well as conservation easements

Primary assignments also include the valuation of large land tracts (including development land, agricultural properties, timberlands, multi-use developments, and environmentally sensitive lands) and partial interests

Valuing partnership interests, conservation easements, lease fee interests, leasehold interests, air rights, transferable development rights, joint ventures, as well as fee simple rights.

Clients include government agencies (federal and state), corporations, pension funds, investment bankers, financial institutions, insurance companies, nonprofit conservancy groups, attorneys, and individuals

Qualified as an expert witness in the Federal District Courts in Florida and Illinois, US Court of Claims, US Bankruptcy Court, Florida and Illinois Circuit Courts.

Approved appraiser for the Florida Department of Environmental Protection.

**LICENSES &
CLERIFICATION**

Alabama Certified General Real Property Appraiser G00610
May 29, 2002 – September 30, 2009

Florida Certified General Appraiser, 0000143
April 15, 2005 – November 30, 2008

Georgia Certified General Real Property Appraiser, 285622
2005- May 31, 2009

Illinois State Certified General Real Estate Appraiser, 553-000785
September 30, 1991 – September 30, 2009

Indiana Certified General Appraiser, CG40300403
September 27, 2003- June 30, 2008

Massachusetts Certified General Real Estate Appraiser, 5601-257042
October 6, 2000 – May 22, 2010

Michigan Certified Appraiser, 1201007606
July 20, 1999 –July 31, 2008

New Jersey Certified General Appraiser, 42RG00194200
July 30, 2002 – December 31, 2009

New York Certified Real Estate General Appraiser, 46000039279
May 22, 2000 – May 21, 2008

Virginia Certified General Real Estate Appraiser, 4001 013685

EDUCATION

Virginia Military Institute, Bachelor of Arts in Economics, 1972

Completed and passed all courses for the MAI designation under the direction of the former American Institute of Real Estate Appraisers (now the Appraisal Institute)

Certified under the Appraisal Institute's voluntary program of continuing education for its designated members MAIs who meet the minimum standards of this program are awarded periodic educational certification

PROFESSIONAL
TEACHING

Approved Appraisal Institute instructor for the following *Valuation of Conservation Easements* course; Case Studies in Highest and Best Use, *Partial Interest Valuation — Divided, Partial Interest Valuation — Undivided* seminars.

Appraiser continuing education instructor for the Ohio Association of REALTORS (1995) and for the Wisconsin Association of REALTORS (2000); Market Analysis and Highest and Best Use; Transitional Properties

Instructor for Reporting the Results of Forestland Appraisals course, Duke University School of the Environment, 1993, co-instructor for Valuation of Timberlands seminar, Duke University School of the Environment, 1987; panel member at the Fourth Timberland Marketplace Conference, Duke University, 1985

EDUCATIONAL
PROGRAM
DEVELOPMENT

Course co-developer of the Appraisal Institute's Conservation Easement Certificate Program.

Developer of Appraisal Institute seminars *Partial Interest Valuation — Divided, Partial Interest Valuation — Undivided* (1999); *Highest and Best Applications* (1995); *Subdivision Analysis*, revision (1993).

Developer of the Appraisal Institute's Report Writing and Valuation Analysis course (1986) and of AIREA's Real Estate Appraisal Applications state-certification module (1989).

Co-developer of the Appraisal Institute's *Timberland Valuation* seminar (1988).

Presentations.

Conservation easement valuation at the Land Trust Alliance, Madison, Wisconsin, conference, October 2005

"Corridors and Rights-of-Way. Valuation & Policy," sponsored by The Centre for Advanced Property Economics and International Right of Way Association. 2002, "Linear Rights of Way Federal Agency Rent

Schedules Reforged," sponsored by the Appraisal Institute for the US Bureau of Land Management and US Forest Service, 2001

Southwest Florida Land Trust's conservation easement seminar, 1997, Coastal Georgia Land Trust, Inc 's conservation easement seminar 1994; Red Hills Conservation Association's Conservation Easements and Estate Planning program, 1993

**PROFESSIONAL
SERVICE**

Member, *Appraisal Journal* Review Panel, 2006 -- present

Member, Region III Nominating Committee, Appraisal Institute, 2001

Chair, Education Committee, Chicago Chapter of the Appraisal Institute, 1997-2000

Member, General Appraiser Board Education Committee and Body of Knowledge Committee, Appraisal Institute, 1994

Vice President and President-elect, 1991, *Greater Florida Chapter of the Appraisal Institute*, Chair, Education Committee, AIREA Florida Chapter 2, 1988-91

Coordinator, Level II Curriculum Development, 1990-1991, Member, Division of Curriculum, Appraisal Institute, 1985-1991, Chair, Development Subcommittee, Appraisal Institute, 1989-1991; Appraisal Institute

RECOGNITIONS

Chicago Chapter of the Appraisal Institute's Distinguished Service Award, 1999

Appraisal Institute's George L. Schmutz Award in recognition of contributions to the advancement of appraisal knowledge, 1991

RMI MIDWEST. CHARLES W. (SANDY) REX III, MAI
PROJECTS & ASSIGNMENTS: RAIL CORRIDORS

NOTE: To maintain confidentiality, clients have not been individually identified; however, they include private transportation corporations, state agencies, attorneys, and not-for-profit conservation groups.

Central Oregon Valuation of transmission line easement across tribal reservation, as well as go-around costs 07-100	Current 30 miles
Miami to Jacksonville, Florida Valuation of an entire regional railroad including going concern and rolling stock	Current 450± miles
UP v. Kendall Morgan Consultation on underground pipeline easement 05-250	Current 1,800 miles
High Line (south of 30th Street), Chelsea; New York City Valuation of an inactive rail line air rights corridor in lower Manhattan 05-240	Current 2 miles
Brooklyn-Queens Expressway; Phases I & II, New York City Valuation of partial taking of a secondary line in the Borough of Queens 03-440/00-180	Current 4-5 miles
Long Island, New York Valuation of power line easement within LIRR right-of-way 06-130	September 2007 125 miles
De Land to Kissimmee, Florida Valuation of mainline running from De Land through downtown Orlando to Kissimmee, included some yards Valuation of track improvements 06-260	September 2007 94± miles
St. Louis County, Missouri Valuation of aerial occupancy within a mainline corridor through the city of St. Louis suburbs 07-120	August 2007 12 miles
Miami to Homestead, Florida Valuation of industrial lead and two spurs, running from Miami International Airport to Homestead Valuation of track improvements 06-250	May 2007 44± miles
Framingham-to-South Sudbury, Massachusetts Valuation of NITU 05-310	May 2007 4 62 miles

RMI MIDWEST: CHARLES W. (SANDY) REX III, MAI
PROJECTS & ASSIGNMENTS: RAIL CORRIDORS

Bergen and Passaic Counties, New Jersey Valuation of partial corridor acquisition for mass transit 06-150	February 2007 10 miles
Norfolk Southern v. Union Electric Company; St. Louis Aerial corridor within railroad right-of-way 05-270	November 2006 5.73 miles
MBTA; New Bedford to Falls River, Massachusetts Valuation and negotiation consultation for the sale of an active rail corridor to a mass transit agency 04-240/06-120	September 2006 30± miles
Tygart-to-Bergoo, West Virginia Consultation and valuation of corridor and rail improvements 04-270	August 2006 132 miles
Norwalk, Connecticut Valuation of abandoned corridor 05-340	March 2006 One mile
De Land-to-Kissimmee, Florida Valuation of mainline corridor. Extends through downtown Orlando 05-300	March 2006 65± miles
Lynchburg, Virginia Valuation of a pipeline easement within rail corridor 05-220	February 2006 1.5± miles
Boston-to-Worcester, Massachusetts Mainline valuation including land and rail improvements 05-350	January 2006 40± miles
Bloomington-to-Indianapolis, Indiana Rent estimate for a proposed occupancy to be used in negotiations with a municipality Client is a midsized regional rail company 06-100	January 2006 4± miles
North of Roosevelt Road; Chicago Update of valuation of vacant, former rail yards with a highest and best use as residential development, near central business district of Chicago 05-330	December 2005 56 acres
St. Louis, Missouri Aerial corridors within railroad rights-of way 05-260	December 2005 13± miles

RMI MIDWEST: CHARLES W. (SANDY) REX III, MAI
PROJECTS & ASSIGNMENTS: RAIL CORRIDORS

Poughkeepsie & Hospital industrial track; Dutchess County, New York NITU rail road valuation	November 2005 4.5± miles
Etowah-to-Copperhill improvements; Tennessee Valuation of rail improvements	November 2005 41 miles
Blenheim industrial track; Sarnia Subdivision, Ontario, Canada Valuation of corridor and rail improvements	September 2005 60± miles
Cordova-to-Memphis bridge; Tennessee Valuation and reproduction costs of a rail road bridge	June 2005 16± miles
St. Petersburg, Pinellas County, Florida Segment of rail line to be abandoned for rail-to-trail purposes, NITU	April 2005 2.15 miles
Carpendale, West Virginia Corridor valuation, including tunnel and bridge 04-190	November 2004 1 mile
Norfolk Southern Rail corridor, Toledo, Ohio Valuation of a rail corridor as part of a municipal water main project, pipeline easement	September 2004 2± miles
Highway 41, Selma, Alabama Valuation of land and track improvements for bargain sale	April 2004 3± miles
North Bergen, New Jersey Preliminary valuation of a 10,000-linear-foot-by-10-foot sewer easement	August 2004
Etowah-to-Copperhill bridge; Tennessee Valuation of 33 bridges	July 2004 46 miles
Gibson Yard, Lake County, Indiana	May 2004
Moorman-to-Wilson Station; Kentucky Valuation of line to be abandoned	March 2004 3± miles
Central Electric, Williamsburg, South Carolina A participant in a court-appointed panel for the valuation of an aerial crossing easement over the railroad	February 2004
Pompton line; New Jersey Valuation consultant for the valuation of a partial interest purchase of a pipeline easement	February 2004
Sheepskin Trail Valuation of fee-owned parcels of an abandoned rail corridor	January 2004 30± miles

RMI MIDWEST: CHARLES W. (SANDY) REX III, MAI
PROJECTS & ASSIGNMENTS. RAIL CORRIDORS

Wabash line, Indiana Estimate of net liquidation value of a rail line	December 2003 30± miles
West Shore; New York Preliminary valuation of an industrial track in Upstate New York	December 2003 5.9 miles
Alma-to-Elwell; Michigan Preliminary valuation of a rail line in central Michigan	December 2003
Shenandoah subdivision, Virginia Preliminary valuation of an industrial lead in Northern Virginia and West Virginia	December 2003 46 miles
Lorain-to-Lester line, Ohio Valuation of land and track improvements	December 2003 15± miles
Piedmont Subdivision, Virginia Preliminary valuation of an active Class I rail corridor	November 2003 201.2 miles
Ft. Wayne, Ohio & Indiana Preliminary valuation of an active Class I rail corridor	October 2003 250.76 miles
Rails-to-Trails Valuation memorandum on the market value of reversionary interest donations under the National Trails System Act	October 2003
Selma-to-Myrtle Wood, Alabama Preliminary valuation of an active Class I rail corridor	September 2003 58.13 miles
Hoopston; Illinois Preliminary valuation of a short industrial track	August 2003 1 mile
Henning-to-Rossville junction; Illinois Preliminary valuation of an industrial track in east central Illinois	August 2003 6 miles
Shepherd Branch; Washington, DC Estimate of market value for negotiations with the District of Columbia and federal government. Included the valuation of current and future occupancies	August 2003 6 miles
Limesdale; Indiana Market value estimate of an industrial lead track in west central Indiana	August 2003 7.97 miles
Old Road, Louisville-to-Winchester, Kentucky Preliminary valuation of an active Class I rail corridor	July 2003 89.5 miles
W&P; Pennsylvania Market valuation of an industrial lead track running from south Pittsburgh to Washington, PA	June 2003

RMI MIDWEST: CHARLES W. REX III, MAI
PROJECTS & ASSIGNMENTS: RAIL CORRIDORS

Alabama Power; Lee County Valuation of an aerial easement crossing a Class I railroad corridor Condemnation	May 2003 33.55 miles
Alabama Power; Elmore County Valuation of an aerial easement crossing a Class I railroad corridor Condemnation	April 2003
Baldwin County Valuation of an aerial easement crossing a Class I railroad corridor Condemnation	April 2003
Etowah-to-Copperhill; Tennessee Consultation on the donation of an abandoned line for rails-to-trails	April 2003 43.47 miles
Lake Subdivision, Indiana Market value estimate for a through-track in a heavy industrial area	April 2003 4 miles
Blue Island; Illinois Consultation on an acquisition	April 2003
Bridge; Clinton, Indiana Valuation of active railroad bridge	February 2003
Alabama Power; St. Clair County Valuation of an aerial easement crossing a Class I railroad corridor Condemnation	February 2003
Nashville Electric Services Valuation consultation and estimate of corridor factor for an aerial taking over an industrial lead corridor in Nashville, valuation consultant in mediation	January 2003
Northwest Highway, northwest Cook County Condemnation for a portion of a corridor for highway expansion	2002
New Jersey Transit Authority; northern New Jersey Valuation and negotiation consultation for the sale of several corridors or portions of corridors to a mass transit agency	2002
Union Pacific v. Santa Fe Valuation of 1,800-mile lease of subsurface rights	September 2002 1,800 miles
Blue Ridge Tunnel; Afton, Virginia Valuation consultation for active railroad tunnel	September 2002
Perth Amboy Run Track; Middlesex, New Jersey Valuation for the sale of a railroad corridor	September 2002
Crescent & Wedge Corridors; Washington, DC Valuation for potential sale of two corridor segments in urban area	June 2002

RMI MIDWEST: CHARLES W. REX III, MAI
PROJECTS & ASSIGNMENTS: RAIL CORRIDORS

Chicago-to-Detroit corridor Preliminary valuation of a main line corridor	March 2002 260 miles
Loup Creek Branch; West Virginia Valuation for the sale of active and abandoned corridors	March 2002 30± miles
PSEG; New Jersey Valuation of proposed underground easements for two 340-kv generator feeds Includes valuation of underground rights in a tunnel under the Palisades	February 2002
Illinois/Indiana Line to Olin, Indiana Net liquidation value of inactive rail line for application for abandonment to STB	January 2002 5.93 miles
High Line, Chelsea; New York City Valuation of an inactive rail line in lower Manhattan of an air rights corridor	2001 2 miles
Weymouth industrial track; Quincy, Massachusetts Valuation and consultation for a corridor for sale to a mass transit agency	2001
Chambersberg, Pennsylvania Consultation on the valuation of a rail corridor	2001
International bridge Consulting for the purchase of a portion of a corridor from a Class I railroad	2001
FED RR v Dade County, Florida Consulting on corridor factors for a condemnation taking from a smaller railroad	2001
Downtown Orlando, Florida Valuation of an active, 2.5-mile, mainline corridor through Orlando's central business district Partial taking	2001 2.5 miles
Boylan Junction; Raleigh, North Carolina Valuation and negotiation consultation of an industrial lead corridor. Sale closed in June 2003	2001 12+ miles
Falstaff Brewery; Indiana Abandoned industrial property consisting of four parcels. Valuation for purchase negotiations to expand a rail yard	2001
Short line railroad; New Castle, Indiana Across-the-fence valuation of railroad right-of-way	February 2000 21.2 acres
Union Pacific property; Lake County, Illinois Valuation of part of a railroad corridor, using an across-the-fence method Valuation of surface and aerial rights. To be used in sale negotiations	January 2000 0.86 acre (37,638 square feet)

RMI MIDWEST: CHARLES W. REX III, MAI
PROJECTS & ASSIGNMENTS: RAIL CORRIDORS

TransFlo facility, 2721 161st St., Hammond, Indiana Valuation of site used for a material transfer facility (offloading of materials from railroad tank cars to tank trucks) Highest and best use issues involved specific industrial uses	May 1999 15.9 acres
Lehigh Greenway Rail Trail: Flagler County, Florida Obsolete rail line abandoned since the 1950s, valued for possible purchase by the State of Florida Multiple highest and best use issues due to variance of uses along the property's length (such as a utility corridor, public trail, additional land for residential lots, future development) Involved evaluation of worth of old track	April 1999 198.52 acres
B&OCT Connection: Commonwealth Edison property, Bridgeview, Illinois Valuation of vacant industrial property in for rail line easement, before-and-after valuation technique used Analysis of south Chicagoland industrial market	April 1999 0.28 acre
B&OCT Connection: 3M Property; Bridgeview, Illinois Valuation of vacant industrial property in for rail line easement, before-and-after valuation technique used Analysis of south Chicagoland industrial market	April 1999 0.41 acre
Cook County Forest Preserve Property; Riverdale, Illinois Valuation of property zoned both conservation/recreation and industrial for railroad line expansion	March 1999 1.43 acres
Damen Ave. & 74th St., Chicago Proposed railroad right-of-way easement in older industrial area Valuation followed Illinois condemnation law Expert witness testimony	February 1999 0.71 acre
CTA property Valuation of industrial property for railroad line expansion	February 1999
UPS Parcel; Bedford Park, Illinois Valuation of vacant industrial site for railroad line expansion	November 1998 11.75 acres
South of Roosevelt Road, Chicago Update appraisal of vacant former rail yards, residential development highest & best use	February 1997 30+ acres
Porter County, Indiana Abandoned rail yard, with some mined areas on it Valued for use in purchase negotiations	August 1996
South of Roosevelt Road; Chicago Vacant former rail yards with a highest and best use as residential development	February 1996 25 acres
North of Roosevelt Road; Chicago Vacant former rail yards with a highest and best use as residential development	September 1995 5.6 acres

3





**APPRAISER CERTIFICATION AND LICENSURE BOARD
3000 Market Street NE, SUITE 541
SALEM, OREGON 97301**

TEMPORARY PRACTICE REGISTRATION NUMBER: TNR1662

**CHARLES W REX III
RMI MIDWEST
1200 CENTRAL AVE
WILMETTE IL 60091**

POSSESSES A CURRENT AND VALID CERTIFICATE IN THE STATE OF

**ILLINOIS
153-000785**

**AND HAS COMPLIED WITH THE REQUIREMENTS OF CHAPTER 674 AND CHAPTER 161 OF THE OREGON APPRAISER
CERTIFICATION AND LICENSURE BOARD ADMINISTRATIVE RULES TO QUALIFY TO RECEIVE A TEMPORARY
PRACTICE PERMIT TO OPERATE IN THE STATE OF OREGON IN THE CAPACITY OF A**

STATE CERTIFIED GENERAL APPRAISER

**YOU ARE AUTHORIZED TO APPRAISE THE FOLLOWING PROPERTIES WITHIN THE SCOPE OF THE
ABOVE LICENSE LEVEL IN THE STATE OF OREGON FOR**

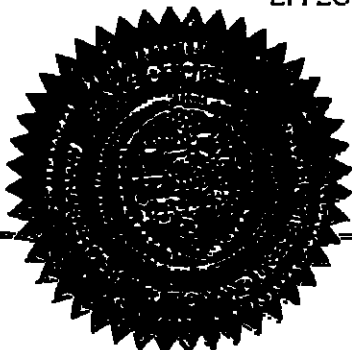
Client: RailAmerica INC

Properties:

**111-mile rail corridor (known as "Coos Bay Line")
in Lane, Douglas & Coos Counties.
(The line runs between Danebo (W Eugene) and Cordes, OR)**

[See Attached Map]

EFFECTIVE THIS 2ND DAY OF MAY, 2008



**R.A. (Bob) KEITH ADMINISTRATOR
OREGON APPRAISER CERTIFICATION AND LICENSURE BOARD**



Port Valuation Sections

Port Section	Mile Start	Mile End	Value Unit	Area acres	Gross Value
1	651 11	651 12	1	0 41	\$0.00
2	652 12	652 20	2	0 99	\$0.00
3	652 20	652 22	1	0 28	\$0 00
4	652.22	652 72	2	6 12	\$0 00
5	652.72	653 11	13	5 61	\$145,860.00
6	653 11	653.15	1	0 65	\$0 00
7	653 15	653 57	6	10 52	\$4,734.00
8	653 57	653 58	1	0 17	\$0.00
9	653.58	653.79	6	3 44	\$1,548.00
10	653 79	653 83	1	0 53	\$0 00
11	653.83	654 12	2	3 55	\$0.00
12	654 12	654 66	2	6 59	\$0 00
13	654 66	654.98	6	8 93	\$4,018 50
14	654 98	654 99	1	0 12	\$0 00
15	654.99	655 24	6	4 43	\$1,993.50
16	655.24	657.29	2	37 78	\$0.00
17	657.29	657 30	1	0 12	\$0.00
18	657 30	657 61	2	3 73	\$0.00
19	657 61	657 62	1	0 12	\$0.00
20	657 62	657.78	3	1 94	\$0 00
21	657 78	658 34	2	7 56	\$0 00
22	658 34	659 08	7	11 21	\$42,037 50
23	659.08	659 20	8	1 78	\$0 00
24	659.20	659 21	1	0 13	\$0.00
25	659.21	659 45	8	2 94	\$0.00
26	659 45	659.58	8	1 54	\$0 00
27	659 58	659.70	8	1 40	\$0 00
28	659 70	659 75	2	0 59	\$0 00
29	659 75	660 25	8	6 06	\$0 00
30	660 25	660 26	1	0 41	\$0 00
31	660.26	660 67	8	15 08	\$0 00
32	660.67	660 68	1	0 34	\$0 00
33	660.68	660 73	8	1 67	\$0 00
34	660 73	661 00	8	6 15	\$0.00
35	661 00	661 29	8	6 21	\$0.00
36	661.29	661.71	3	8 84	\$0 00
37	661 71	663 20	6	27 21	\$12,244.50
38	663.20	663.33	7	1 54	\$5,775 00
39	663 33	664 02	6	9 65	\$4,342 50
40	664 02	664 38	3	8 10	\$0 00
41	664 38	664 69	3	8 79	\$0.00
42	664 60	665 01	3	7 10	\$0 00
43	665.01	665 24	14	1 48	\$19,240 00
44	665.24	665 25	1	0 00	\$0 00
45	665 25	665 32	14	0 42	\$5,460 00
46	665 32	665 33	1	0 41	\$0 00
47	665 33	665 54	14	3 69	\$47,970.00
48	665 54	665 88	3	4 52	\$0.00
49	665.88	666.63	7	13 31	\$49,912 50
50	665 22		1	0 14	\$0 00
51	666.63	667.40	7	10 47	\$39,262 50

Port Valuation Sections

Port Section	Mile Start	Mile End	Value Unit	Area acres	Gross Value
52	667 40	667 46	1	0 69	\$0 00
53	667 46	668 35	3	17 60	\$0 00
54	668 35	668 36	1	0 24	\$0 00
55	668 36	669.21	3	20 50	\$0 00
56	669.21	669.47	3	8 42	\$0.00
57	669.47	669 94	3	7.32	\$0.00
58	669 94	671 90	3	38 70	\$0 00
59	671 90	671 91	1	0 11	\$0 00
60	671 91	672 34	3	7.37	\$0.00
61	672 26	672 41	1	0 41	\$0 00
62	672.41	672 95	3	6 54	\$0.00
63	672 95	674 67	4	29.81	\$7,452.50
64	674 67	675 10	7	4 99	\$18,712 50
65	675 10	675 55	4	5.49	\$1,372.50
66	675 55	676 16	7	14.26	\$53,475 00
67	676 16	677.72	3	23 59	\$0.00
68	677 72	678 35	3	11 37	\$0 00
69	678 35	679 52	3	17.78	\$0.00
70	679 52	680 64	4	13 51	\$3,377.50
71	680 64	683 55	3	40 39	\$0 00
72	681.09	681 18	1	0 29	\$0 00
73	683 55	684 15	4	6.97	\$1,742 50
74	684.15	684.68	3	13 04	\$0 00
75	685.28	686 62	4	21 91	\$5,477 50
76	686 62	689 33	3	63 41	\$0.00
77	689 33	689 65	4	5.75	\$1,437.50
78a	689 65	691 15	3	23 47	\$0 00
78b	690 88	691 10	1		\$0 00
79a	691.15	694 82	3	58 24	\$0 00
79b		694.35	1	0 36	\$0 00
80	694.82	694.84	1	0 21	\$0 00
81	694.84	695 05	4	2 55	\$637 50
82	695.05	695.49	7	5 34	\$20,025 00
83	695 49	696 66	3	16 23	\$0.00
84	696 66	696 71	1	0.71	\$0.00
85	696 71	696 84	7	1 61	\$6,037 50
86	696.84	697 23	7	9 50	\$35,625 00
87	697 23	697 78	7	8.06	\$30,225 00
88	697.78	697.89	14	1 51	\$19,630.00
89	697 89	698.00	14	1 78	\$23,140 00
90a	698 00	698.38	14	4 43	\$57,590 00
90b	698 11		1	0 12	\$0 00
91	698 38	698 85	3	9 82	\$0.00
92	698 85	699 75	7	11 32	\$40,384.00
93a	699 75	701 62	3	34.50	\$0 00
93b	700.40		1	0.14	\$0 00
94	701.62	701 82	7	2.39	\$8,962.00
95	701.90		1	0.14	\$0 00
96	701 82	702.14	2	3 82	\$0 00
97	702 14	702 25	7	1 38	\$5,175.00
98	702 25	702 80	3	6 67	\$0 00

Port Valuation Sections

Port Section	Mile Start	Mile End	Value Unit	Area acres	Gross Value
99	702.80	702.86	7	0.69	\$2,587.50
100	702.86	703.60	4	8.97	\$1,668.50
101	703.60	703.72	7	1.45	\$5,437.50
102	703.72	703.77	3	0.64	\$0.00
103	703.77	703.90	7	1.63	\$6,112.50
104	703.90	704.20	3	4.40	\$0.00
105	704.20	704.36	7	1.99	\$7,462.50
106	704.36	704.74	3	5.44	\$0.00
107	704.74	705.04	7	6.59	\$24,712.00
108	705.04	705.44	3	1.27	\$0.00
109	705.44	705.55	7	2.69	\$10,087.50
110	705.55	705.55	1	0.23	\$0.00
111	705.55	705.91	3	6.58	\$0.00
112	705.91	706.08	7	3.19	\$11,962.50
113	706.08	706.09	1	0.13	\$0.00
114	706.09	706.21	7	2.35	\$8,812.50
115	706.09	707.07	3	16.78	\$0.00
116	707.07	707.55	3	19.91	\$0.00
117	707.55	708.40	3	10.69	\$0.00
118	708.40	708.99	3	7.58	\$0.00
119	708.99	709.02	3	0.48	\$0.00
120	709.02	709.17	3	2.32	\$0.00
121	709.17	709.71	3	10.95	\$0.00
122	709.71	710.28	3	9.88	\$0.00
123	710.28	710.29	1	0.14	\$0.00
124	710.29	710.39	2	1.37	\$0.00
125	710.39	710.54	7	1.95	\$7,312.50
126	710.54	710.88	3	4.10	\$0.00
127	710.88	710.98	7	1.28	\$4,800.00
128	710.98	713.90	3	21.69	\$0.00
129	711.16	711.16	1	0.07	\$0.00
130	713.90	714.26	2	6.51	\$0.00
131	714.26	714.26	1	0.09	\$0.00
132	714.26	714.44	7	3.32	\$12,450.00
133	714.44	714.59	7	2.70	\$10,125.00
134	714.59	714.84	3	3.02	\$0.00
135	714.84	715.31	3	5.74	\$0.00
136	715.31	715.77	3	5.56	\$0.00
137	715.77	715.95	3	3.15	\$0.00
138	715.95	716.02	3	0.84	\$0.00
139	716.02	716.03	1	0.09	\$0.00
140	716.03	716.22	2	1.81	\$0.00
141	716.22	716.37	2	1.83	\$0.00
142	716.37	716.41	1	1.52	\$0.00
143	716.41	716.43	17	0.21	\$10,290.00
144	716.43	716.56	1	0.00	\$0.00
145	716.56	716.92	2	4.34	\$0.00
146	716.92	717.03	1	1.76	\$0.00
147	717.03	717.80	3	13.70	\$0.00
148	717.80	718.10	3	3.99	\$0.00
149	718.10	718.76	3	8.07	\$0.00

Port Valuation Sections

Port Section	Mile Start	Mile End	Value Unit	Area acres	Gross Value
150	718.76	718.82	3	0.78	\$0.00
151	718.82	719.03	2	2.55	\$0.00
152	719.03	719.04	1	0.40	\$0.00
153	719.04	720.20	3	17.78	\$0.00
154	720.20	720.31	4	1.80	\$450.00
155	720.31	720.31	1	0.17	\$0.00
156	720.32	720.75	3	5.42	\$0.00
157	720.75	721.15	3	7.90	\$0.00
158	721.15	721.53	3	4.65	\$0.00
159	721.53	721.64	3	1.43	\$0.00
160	721.64	723.02	3	18.57	\$0.00
161	723.02	724.33	3	16.60	\$0.00
162	724.33	724.53	9	2.59	\$9,712.50
163	724.53	724.67	17	1.73	\$84,770.00
164	724.67	724.76	12	1.10	\$5,500.00
165	724.76	724.80	9	0.48	\$1,800.00
166	724.80	725.18	9	4.90	\$18,375.00
167	725.18	725.43	12	3.85	\$19,250.00
168	725.43	725.91	3	7.42	\$0.00
169	725.91	726.12	1	0.00	\$0.00
170	726.12	726.30	12	2.64	\$13,200.00
171	726.30	726.47	1	0.00	\$0.00
172	726.47	726.90	3	5.02	\$0.00
173	726.90	727.04	12	1.56	\$7,800.00
174	727.04	727.18	3	1.66	\$0.00
175	727.18	727.22	17	0.49	\$24,010.00
176	727.22	727.33	17	1.40	\$68,600.00
177	727.33	727.58	1	2.92	\$0.00
178	727.58	727.72	3	1.69	\$0.00
179	727.72	727.95	3	2.75	\$0.00
180	727.95	727.97	3	0.30	\$0.00
181	727.97	730.56	3	46.97	\$0.00
182	730.56	730.80	1	4.82	\$0.00
183	730.82	731.63	3	15.05	\$0.00
184	731.63	732.12	1	7.89	\$0.00
185	732.12	733.68	3	28.40	\$0.00
186	733.68	733.86	1	3.31	\$0.00
187	733.86	733.99	3	2.35	\$0.00
188	733.99	734.22	1	4.11	\$0.00
189	734.22	734.49	3	6.37	\$0.00
190	734.49	734.78	3	3.57	\$0.00
191	734.78	735.71	3	17.36	\$0.00
192	735.71	737.04	3	24.57	\$0.00
193	737.04	737.16	3	2.19	\$0.00
194	737.16	737.44	14	5.09	\$66,170.00
195	737.44	737.73	3	5.80	\$0.00
196	737.73	738.41	3	13.00	\$0.00
197	738.41	738.66	10	4.51	\$11,273.50
198	738.66	738.67	1	0.17	\$0.00
199	738.67	738.77	10	1.83	\$6,862.50
200	738.77	738.99	10	3.99	\$14,962.50

Port Valuation Sections

Port Section	Mile Start	Mile End	Value Unit	Area acres	Gross Value
201	738.99	739.91	2	11.67	\$0.00
202	739.91	739.93	15	0.35	\$20,617.00
203	739.93	740.06	15	1.72	\$101,318.32
204	740.06	740.14	15	1.71	\$100,729.26
205	740.14	740.28	15	1.25	\$73,632.50
206	740.28	740.30	1	0.00	\$0.00
207	740.30	740.44	15	0.68	\$40,056.08
208	740.44	740.47	1	0.00	\$0.00
209	740.47	740.55	15	0.40	\$23,562.40
210	740.55	740.85	2	5.20	\$0.00
211	740.85	742.55	2	36.30	\$0.00
212	742.55	742.76	2	3.79	\$0.00
213	742.76	742.99	10	4.51	\$16,912.50
214	742.99	743.00	1	0.21	\$0.00
215	743.00	743.25	2	4.66	\$0.00
216	743.25	743.51	10	5.02	\$18,825.00
217	743.51	743.89	3	2.30	\$0.00
218a	743.89	744.55	3	11.36	\$0.00
218b	743.89	744.55	1	0.89	\$0.00
219	744.55	744.90	4	7.71	\$1,927.50
220	744.90	745.46	3	14.26	\$0.00
221	745.46	745.67	3	11.56	\$0.00
222	745.67	746.43	3	9.60	\$0.00
223	746.43	747.96	3	48.19	\$0.00
224	747.96	747.97	1	0.17	\$0.00
225	747.97	748.64	3	9.49	\$0.00
226	748.64	749.08	1	7.42	\$0.00
227	749.08	749.34	3	3.79	\$0.00
228	749.34	749.46	5	2.16	\$10,800.00
229	749.46	749.87	3	7.99	\$0.00
230	749.87	750.06	1		\$0.00
231	750.06	750.38	3	7.67	\$0.00
232	750.38	750.46	4	1.01	\$252.50
233	750.46	750.79	3	6.52	\$0.00
234	750.79	751.17	3	5.72	\$0.00
235	751.17	751.28	3	2.76	\$0.00
236	751.28	751.59	16	7.42	\$0.00
237	751.59	751.69	16	2.23	\$0.00
238	751.69	751.96	16	4.84	\$0.00
239	751.96	752.09	16	0.62	\$0.00
240	752.09	752.13	16	0.20	\$0.00
241	752.13	752.14	1	0.07	\$0.00
242	752.14	752.19	16	0.25	\$0.00
243	752.19	752.37	16	0.85	\$0.00
244	752.37	752.42	16	0.19	\$0.00
245	752.42	752.54	16	0.55	\$0.00
246	752.54	752.78	16	5.86	\$0.00
247	752.78	752.97	11	3.37	\$12,637.50
248	752.97	753.01	1	0.72	\$0.00
249	753.01	753.11	1	1.66	\$0.00
250	753.11	753.73	2	9.20	\$0.00

Port Valuation Sections

Port Section	Mile Start	Mile End	Value Unit	Area acres	Gross Value
251	753.75	753.96	11	4.68	\$17,550.00
252	753.96	753.97	1	0.21	\$0.00
253	753.97	754.65	2	12.36	\$0.00
254	754.65	755.17	2	8.67	\$0.00
255	755.17	755.78	2	10.51	\$0.00
256	755.78	756.08	2	5.44	\$0.00
257	756.08	756.21	2	2.46	\$0.00
258	756.21	756.31	12	1.79	\$8,950.00
259	756.31	756.40	11	2.14	\$0.00
260	756.40	756.41	1	0.23	\$0.00
261	756.41	756.43	12	0.69	\$3,450.00
262	756.43	756.65	1	5.42	\$0.00
263a	756.65	756.78	11	3.12	\$0.00
263b	756.75	756.75	1	0.29	\$0.00
264	756.78	756.89	1	2.72	\$0.00
265	756.89	757.05	11	2.94	\$11,025.00
266	757.05	757.33	2	5.04	\$0.00
267	757.33	757.38	1	0.90	\$0.00
268	757.38	758.10	2	11.56	\$0.00
269	758.10	758.57	2	12.47	\$0.00
270	758.57	759.14	2	5.91	\$0.00
271	759.14	759.30	2	3.39	\$0.00
272	759.30	759.31	1	0.17	\$0.00
273	759.31	759.44	2	2.41	\$0.00
274	759.44	759.53	11	1.72	\$6,450.00
275	759.53	759.96	2	10.82	\$0.00
276	759.96	762.15	2	37.94	\$0.00
277	762.15	763.13	2	21.62	\$0.00
				1,850.80	\$1,670,129.06

5



MEMO

December 14, 2000

RE Railroad Appraisal Discussion with George Ross of A & K Railroad Materials

George explained that this company purchases abandoned railroad lines, salvages the material and then sells off the remaining right-of-way. They typically hold on for ATF values and the sell-off time is about three years although it can be longer. He acknowledged that some portions of the right-of-way do not ever sell and these are typically wetlands or portions sandwiched between ditches that have no access or use. He also mentioned that they have various games they play to create or enhance demand, such as proposing a snowmobile trail along the right-of-way. He is of the opinion that most right-of-way eventually sells.

When they analyze the value of abandoned right-of-way land they typically consider sales costs, holding costs and bring it back to a present value. The discount rate they utilize is 14% which he said was typically an industry standard that accounts for the extraordinary risk involved with selling off abandoned right-of-way. Regarding sales costs, he said this is typically 10-15% but varies depending on the type of property. In an urban setting it would be less than 10% and in a rural setting 15% is more adequate considering the low value of property involved.



6



If it has access to dunes
it has value

not enough access pts

Just want a place to park & camp

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

<i>Oregon International Port of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.</i>)))))	Finance Docket No. 35160
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VERIFIED STATEMENT OF PATRICIA L. CHAPMAN

My name is Patricia L. Chapman. I am a partner in the law firm of Gleaves Swearingen Potter & Scott, a law firm located in Eugene, Oregon and established in 1924. My business address is 975 Oak Street, Suite 800, Eugene, Oregon 97401. I am currently a licensed member of the Oregon State Bar and of the California State Bar. I received a B.A. in Political Science from the University of California at Berkeley in 1979 (*summa cum laude* and Phi Beta Kappa) and a J.D. from the University of San Francisco in 1982. I have practiced law for approximately 25 years, in Oregon for approximately 20 of these years, and for much of that time I have been engaged in the practice of real estate law. I was a member of the Executive Committee of the Oregon State Bar's Real Estate and Land Use Section for several years and in 2006 served as the Chair of the Real Estate and Land Use Section of the Oregon State Bar.

The purpose of this Verified Statement is twofold: first, to explain the process undertaken by me and other attorneys in this firm under my supervision (referred to below as "we", "us" and "our"), to determine whether fee title was conveyed to the Central Oregon & Pacific Railroad, Inc. ("CORP") for the parcels comprising that portion of CORP's "Coos Bay Subdivision" that is the subject of the Feeder Line Application filed by the Oregon International Port of Coos Bay

(“Feeder Line Segment”); and second, to address the scope of the language set forth in the original deeds from SPT to CORP providing that “[n]o permanent building, structure or fence shall be erected or maintained by Grantee on or over the Communications and Pipeline Easement Property which would obstruct or interfere with any then existing or planned Microwave Facilities or other communications facilities or pipelines of Grantor located on or planned to be located on the Communications and Pipeline Easement Property” (the “No-Build Clause”). To determine whether fee title was conveyed to CORP with respect to each parcel comprising the Feeder Line Segment, we reviewed CORP’s Title Maps and the Schedules of Property noted on those Title Maps for each of the parcels comprising the Feeder Line Segment (respectively, “Val Maps” and “Land Schedules”), as well as several hundred conveyance documents listed in the Land Schedules. Based on our review of those documents, and on our review and analysis of Oregon law pertaining to those documents and the nature of the title purported to be conveyed thereby, we determined which of those documents purported to convey fee title to the railroad grantee therein, which of those documents purported to grant an interest to the railroad grantee therein that was less than a fee title interest (such as a mere easement), and which of those documents purported to grant a fee interest to the railroad grantee therein that was subject to a public right of way or timber restriction. A summary of that review is set forth in the “CORP – Coos Bay Feeder Line Segment Title Documents Summary” attached hereto as Attachment 1.

We also reviewed the spreadsheet entitled Coos Bay Title – Feeder Line Summary, which was prepared and provided to us by RMI Midwest (“Appraiser’s Summary”). A copy of the Appraiser’s Summary is attached hereto as Attachment 2. Based on our review of the documents and our review and analysis of applicable Oregon law described in the preceding paragraph, we have advised RMI Midwest: (a) that fee title was conveyed to the railroad with respect to each

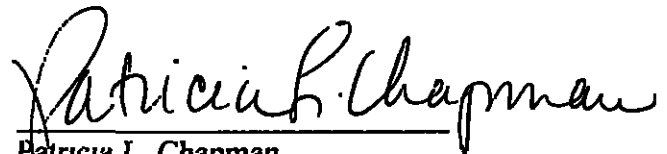
enumerated parcel in the Appraiser's Summary with respect to which the word "Fee" appears in the Appraiser's Summary column entitled "Title Description," (b) of parcels comprising the Feeder Line Segment with respect to which the documents reviewed by us purported to convey less than fee title to the railroad grantee therein or purported to convey fee title subject to public rights of way or subject to timber reservations, and (c) of parcels comprising the Feeder Line Segment that appear to be subject to a sovereign claim by the State of Oregon for lands lying below the mean ordinary high water mark of navigable waters.

Regarding the No-Build Clause, based both on the plain meaning of the wording of the No-Build Clause and on the application of Oregon law to the interpretation and effect of easements and equitable servitudes such as the No-Build Clause, the owner of the land subject to the No-Build Clause would not be prohibited outright from building (or otherwise using and enjoying) the subject property, but rather would only be prohibited from placing a permanent building or structure on property subject to the No-Build Clause if, "it would obstruct or interfere with any then existing or planned" microwave or other communications facilities or pipelines. As to future construction of microwave or other communications facilities or pipelines, the No-Build Clause on its face limits the landowner's obligation to relocate "any *temporary* material or obstruction," Conversely, if the "obstruction" to a future installation of pipeline or communications facilities is *permanent* (such as a building constructed on the property at a time at which no such pipeline or communications facilities were either "existing" or "planned"), the easement holder may not require the landowner to relocate it and instead the easement holder would need to work around the permanent improvement in installing such pipeline or communications facilities in the future. The plain wording of the No-Build Clause is consistent with our interpretation of Oregon law, which we view as having repeatedly held that

the use of an easement is limited to what is reasonably necessary for the easement's intended purpose and that the landowner also has a right to make reasonable use of the landowner's land (See *Craft v Weakland*, 174 Or App 185, 189, 23 P.3d 413 (2001), *Watson v Banducci*, 158 Or App 223, 230-1, 973 P 2d 395 (1999), *Tooker v Feinstein*, 131 Or App. 684, 687, 886 P 2d 1051 (1995), *Chevron Pipe Line Co v De Roest*, 122 Or. App. 440, 445, 858 P.2d 164 (1994))

VERIFICATION

I, Patricia L. Chapman, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.


Patricia L. Chapman

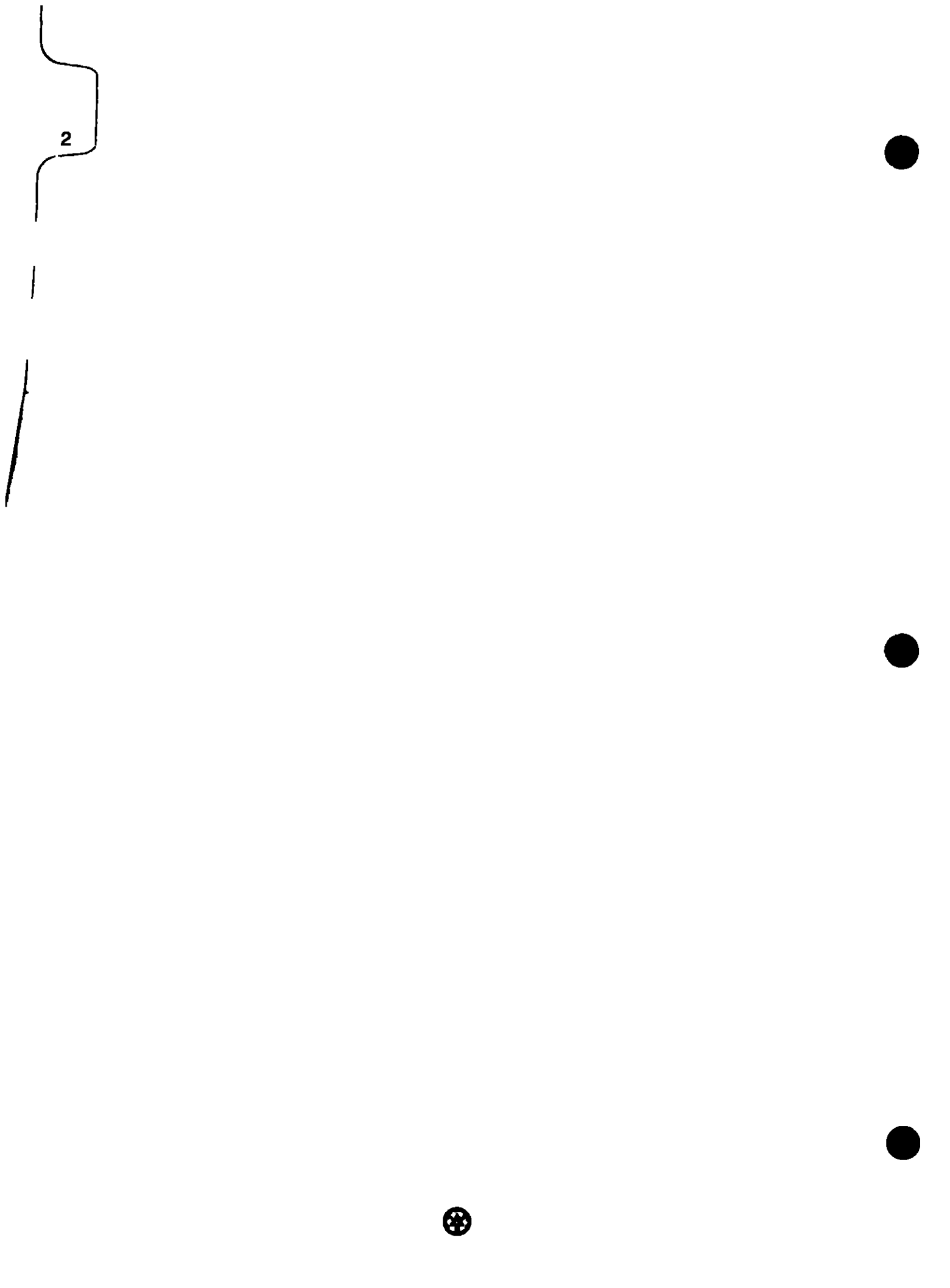
Executed on August 27, 2008



1



REDACTED



REDACTED

PETTIGREW

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Oregon International Port of Coos Bay – Feeder Line)	
Application - Line of the Central Oregon & Pacific)	Docket No 35160
Railroad, Inc)	
)	

VERIFIED STATEMENT OF ALAN PETTIGREW

My name is Alan Pettigrew. I am Vice President-Purchasing for RailAmerica, Inc. ("RailAmerica") I have 32 years of experience working in the railroad industry, including 20 years with Southern Pacific Transportation Company, more than five years with the Union Pacific Railroad Company, and more than six years with RailAmerica. My business address is 7411 Fullerton Street, Suite 300, Jacksonville, Florida 32256. As Vice President-Purchasing, I am responsible for the purchase and sale of railroad track, ties, and other track materials on a daily basis, on behalf of 41 short line and regional railroads that operate approximately 7,800 route miles in 25 States and three Canadian provinces.

The purpose of this Verified Statement is to present my evaluation of the net liquidation value ("NLV") for the track assets on the Coos Bay Subdivision of the Central Oregon & Pacific Railroad ("CORP") submitted by the Oregon International Port of Coos Bay (the "Port") in this proceeding. The Coos Bay Subdivision that the Port seeks authority to purchase runs between CORP milepost 763.13 near Cordes, OR, and CORP milepost 652.114 near Danbo, OR. For purposes of this Statement, I will refer to the line of railroad the Port seeks to purchase (from MP 652.114 to 763.13) as the "Coos Bay Subdivision" or the "Line." The section between CORP milepost 763.13 and CORP milepost 669.0 near Vaughn is known as the "Abandonment Segment" in CORP's pending abandonment proceeding, and the segment between Vaughn and

Danebo (MP 652.114 to MP 669.0) will be referred to in this Statement as the “Vaughn-Danebo Segment.”

In addition to my own analysis of the Port’s NLV estimate, I have consulted with two experts from leading railroad track removal and salvage companies, I. B. Foster Company (“Foster”) and Unitrac Railroad Materials, Inc. (“Unitrac”), who provided their independent analysis of the NLV estimate submitted by the Port. *See Attachments 1 and 2 to this Statement.* I hereby adopt and incorporate by reference the information and opinions set forth in Attachments 1 and 2 and their appendices.

Even more important to an analysis of the overall accuracy of the Port’s NLV estimate, both Unitrac and L.B. Foster developed and provided actual firm and binding offers to purchase the track assets of the Coos Bay Subdivision from CORP. *See Attachments 1-4.* Unlike the R.L. Banks estimate, which was prepared by a consultant hired by the Port of Coos Bay solely for the purposes of this proceeding, the actual purchase offers made by Unitrac and Foster constitute the real-world “net liquidation value” of the track assets of the Coos Bay Subdivision. The “all-in” purchase offer for the track assets (which includes the costs associated with removal, sale or disposal of those assets) provided by L.B. Foster, is \$17,609,000. Unitrac’s offer for purchase of all track assets except bridges is \$19,504,000.

In summary, my review concludes that the R.L. Banks (“R.L.B”) NLV estimate has several fundamental flaws that result in gross understatement of the NLV of the Coos Bay Subdivision. First, the Port’s NLV estimate is based on assumptions and estimates by a consultant who lacks relevant real world experience in the supply, salvaging, and sale of track assets, while CORP’s valuation is based on actual purchase offers from experienced rail salvage and supply companies. Second, perhaps as the result of its consultant’s lack of relevant real

world experience, the Port's estimate misclassifies a substantial portion of the rail and other track material ("OTM") found on the Line, in part because of the remarkable assumption that none of the rail on the entire line is of relay quality. Third, the Port used outdated metals price estimates, which are substantially below current market prices, to estimate the value of the "scrap" rail and OTM. Fourth, the Port assumes that certain bridges would have to be removed if the line is abandoned, and then grossly overstates bridge removal costs. Fifth, the Port significantly overstates the costs of transportation of track materials to market. Finally, the Port overestimates the proportion of OTM materials that would be "lost" during salvage operations, resulting in a large understatement of the NLV of those materials. This statement explains my conclusion, based on those reviews and analyses, that the Port's estimate substantially understates the NLV of the track assets on the Coos Bay Subdivision; provides appropriate adjustments and corrections to the Port's NLV calculations; and provides more reasonable, market-based estimates of the NLV of the track assets of the Coos Bay Subdivision.

I. OBJECTIVE THIRD-PARTY ESTIMATES OF NET LIQUIDATION VALUE

In order to develop an accurate, objective estimate of the NLV of the track assets of the Line, I solicited actual commercial purchase bids from two experienced, reputable companies engaged in removal, salvage, and disposal of railroad track assets: L.B. Foster Company and Unitrac Railroad Materials, Inc. Both Foster and Unitrac prepared estimates of the net value of the track assets for the Abandonment Segment of the Coos Bay Subdivision (*i.e.*, the salvage value of the assets less the removal costs and other associated costs) in connection with CORP's Application for Abandonment Authority in AB-515 (Sub-No. 2).

After the Port filed its Feeder Line Application, I asked both Foster and Unitrac to provide an actual binding offer to purchase the assets of the Coos Bay Subdivision, including both the Abandonment Segment and the Vaughn-Dancbo Segment. Foster and Unitrac each

developed purchase offers (covering the removal, salvage, sale, and disposal of track assets and associated expenses) for the Line after conducting independent field inspections of the Coos Bay Subdivision and reviewing track asset inventories provided by CORP. Some of the materials prices used in developing these offers are different (for example some metals prices are higher) than the prices Unitrac and/or Foster used in developing the estimates submitted in CORP's pending abandonment proceeding. This reflects changes in the relevant commodities markets between late May and early June 2008 (when Foster and Unitrac provided their estimates for purposes of the abandonment proceedings) and the present. Both offers include a substantial profit margin for the offeror.

In my opinion, these actual firm purchase offers, developed by two experienced companies engaged in the business of salvaging rail lines, provide the actual, market-based, net liquidation value of the track assets of the Coos Bay Subdivision. They are far superior to the theoretical estimate prepared by the Port's litigation consultant RLB. In addition, based on my careful review and comparison of the two purchase offers submitted by L.B. Foster and Unitrac with the NLV estimate generated by RLB, my 32 years of experience in the field, and my ongoing daily experience in buying and selling rail materials and salvage markets, I find Foster's and Unitrac's purchase offers more reasonable, more grounded in and consistent with actual market data and conditions, and more reflective of the actual net value of the subject assets. The fact that two purchase offers, independently developed using significantly different approaches, are in the same general range of value further confirms their reasonableness and grounding in real market values. The fact that the Port's NLV is approximately 50% of those actual purchase offers supports my conclusion that the Port's estimated NLV is unrealistic and not market-based.

A. Unitrac Purchase Offer

Based upon its “thorough physical inspection of the entire line, current market prices and costs and Unitrac’s extensive experience” in this type of project, Unitrac has offered to purchase the track assets of the Coos Bay Subdivision for a total of \$19,580,204, consisting of \$16,367,124 for the Abandonment Segment and \$3,213, 080 for the Vaughn-Danebo Segment. See Unitrac “Bid for Coos Bay Subdivision Track Assets and Evaluation of Port of Coos Bay’s NLV” (Aug. 22, 2008), Attachment 1 at 1. Detailed line-item information underlying the Unitrac purchase offer is included in a chart accompanying that offer See Attachment 1. Appendix 1

The Unitrac offer assumes that the purchaser would not be required to remove any bridges on the Coos Bay Subdivision. I believe that is a reasonable assumption. In my experience, rail bridges generally are not removed when a line is abandoned, especially when there is potential use of the roadbed as a bicycle or hiking trail and removal of bridges would eliminate that use.

This particular line, which runs through rugged scenic country, including forested land and Oregon’s famous dunes area, might be used as a continuous bicycle or hiking trail, and removal of bridges would preclude such a use. The Line might be used as a hiking and biking trail extending from Coos Bay among State and National Forests, along the edge of the Oregon Dunes National Recreation Area and inland to Eugene. In fact, CORP has received an expression of interest in purchasing the Line for potential trail use from the Oregon Trust for Public Land. See Attachment 10. Without the bridges over the Siuslaw and Umpqua Rivers, such a trail would not be possible.

I also understand that representatives of the Coast Guard have advised CORP that, if rail right-of-way is converted to trail use, the Coast Guard will not seek removal of bridges used for

such a trail, so long as the trail owner accepts responsibility for maintaining the bridge. *See* Attachment 9 (response from Coast Guard headquarters to CORP's questions regarding bridge removal in the event of abandonment). And, the Chief of the Bridge Section of the Coast Guard's District Office in Seattle told CORP informally that, if the Coast Guard did determine that a bridge span obstructing a navigable waterway should be removed, it is very unlikely that the Coast Guard would require removal of any bridge structure that did not cross the navigable waterway. That same representative also told CORP that there are several options for modifying bridges over navigable waters, short of removal, that may be considerably less costly than removing those bridge spans entirely.

If we determined that bridge removal was required, and CORP decided to proceed with the Unitrac proposal, we would either obtain separate quotes directly from qualified companies for removal, or allow Unitrac to do the same, incorporate that value into its overall offer, and furnish a revised proposal. CORP obtained a separate bid for the removal of the two bridges from Staton Companies, a demolition company located in Eugene, OR. Staton's bid offers to remove the spans over the navigable portions of the Umpqua and Siuslaw River bridges for \$2,065,790. *See* Attachment 7. If CORP accepted Unitrac's purchase offer, it could also accept Staton's bridge removal bid. Staton would then remove the bridges, and Unitrac would remove and salvage the other track assets. This would result in an effective reduction of the overall value of the Unitrac offer (\$19,580,204) by \$2,065,790, to \$17,514,414.

B. L.B. Foster Company Purchase Offer

L.B. Foster has submitted a firm purchase offer for the track assets of the Coos Bay Subdivision (including the bridges over the Siuslaw and Umpqua Rivers) of \$17,599,000. *See* Attachments 3-4 (setting forth L.B. Foster's purchase offer for the track assets of the

Abandonment Segment and the Vaughn-Danebo segment, and supporting detail)¹ L.B. Foster's purchase offer expressly states that it is based upon Foster's "complete and thorough site inspection of the entire Coos Bay Subdivision." As Foster's general manager summarizes in the purchase offer letters,

This is an "all-in" purchase offer for the track assets of the line, which reflects our market-based calculation of the "Net Liquidation Value" of the line, including all relevant costs (costs of removal, transportation, disposal, etc.) and track asset values.

Attachment 3. As the supporting detail makes clear, Foster's purchase offer includes removal of the Siuslaw and Umpqua river bridges. *See* Attachment 3, Appendix 1. Foster determined that the net cost of removing those two bridges and selling or disposing of the salvageable materials would be \$2,000,000. *See* Attachment 3. Foster accordingly reduced its offer by that amount. *See* Attachment 3. In my view, the bridge component of Foster's offer should be given great weight in determining the net liquidation value of the bridges, because it is an actual market-based firm offer by an experienced contractor that stands ready to do the work for the price it offered.

Foster determined the gross value of the Line's track assets, set forth in the supporting chart submitted with its purchase offer, to be \$28,318,775. *See* Attachments 3-4. The prices and costs that Foster used to develop its purchase offer are based on current market conditions and its own recent experience in actual removal, sale, and disposition of track assets. *See* Attachments 3, 4. For example, Foster used metals prices for which it actually sold the same classes of salvaged rail in July and August of 2008. Using current prices is important, because

¹ I note that the supporting data submitted by LB Foster appear to indicate a purchase offer price for the Abandonment Segment that is \$10,000 higher than the price set forth in Mr. Steininger's purchase offer letter. I will conservatively use the lower dollar number (\$15,120,000) from the offer letter for purposes of my testimony and analysis.

market prices for relay, re-roll, and scrap rail and OTM have increased significantly over the course of 2008. As I discuss in more detail in the next section, the NLV estimate submitted by the Port relies on older composite indices that significantly understate current prevailing market prices. Similarly, based on its actual current market experience, Foster determined that the total liquidation costs for the Line, including a substantial profit margin, were \$10,709,775. Foster's resulting purchase offer of \$17,599,000 is a market-based NLV of the Coos Bay Subdivision track assets.

To calculate a single NLV for the Coos Bay Subdivision track assets, I averaged the purchase offers from Foster and Unitrac. The Foster offer is for \$17,599,000 and the Unitrac offer is for \$19,580,204, resulting in an average offer of \$18,589,602.² This average of two real world offers shows the actual NLV of the track assets of the Coos Bay Subdivision.

II. EVALUATION OF THE PORT'S ESTIMATED NET LIQUIDATION VALUE

A. The Port's Theoretical NLV Estimate Is Substantially Inferior To The Actual Purchase Offers Obtained By CORP.

The Port's consultant and witness Mr. Davis states that he developed his NLV estimate based upon spot checks of track conditions from road crossings and highways and a helicopter inspection. In my experience, the only accurate and reliable way to evaluate the condition of track assets on a line of railroad for valuation purposes is by conducting a direct physical inspection of the entire line, usually using a hi-rail vehicle and stopping frequently to conduct walking inspections and close-up examinations of track asset conditions. This was the approach

² If removal of the bridges over navigable waters of the Siuslaw and Umpqua Rivers were required, the effective NLV represented by the Unitrac offer would be reduced by the amount of the Staton Company bid for removing those bridge spans (\$2,065,790) because either CORP or Unitrac could retain Staton to perform the bridge removal work. This would result in a net sale price of \$17,215,114. The average of that price and the Foster purchase offer (which includes removal of the bridges) of \$17,599,000 is \$17,407,057.

followed by both companies that CORP asked to provide a bid for those assets. As Mr. Steininger of Foster explained, a “complete walking inspection of the line . . . is the only method that can accurately assess the condition of the track components. The limited ‘spot checking’ approach used by Mr. Davis (the Port’s consultant from RL Banks) cannot generate an accurate assessment of the NLV of a line of rail extending more than 111 miles.” See Attachment 2 (R. Steininger evaluation of Port NLV estimate). Based on this fundamental flaw alone, the NLV estimate submitted by the Port with its Feeder Line Application should be considered wholly unreliable.

A second basic difference between the purchase offers I received from contractors Unitrac and Foster and the NLV estimate generated by the Port’s consultant is that the contractors’ bids are firm, real-world commercial *offers* to purchase the assets. CORP could accept either one of the offers, and the selected offeror would be contractually obligated to salvage the Coos Bay Subdivision at the offered price. Therefore, both Unitrac’s and Foster’s bids are disciplined by market requirements. The Port’s estimate is theoretical, created solely for purposes of this litigation. Because there is no possibility that the Port’s consultants will be expected to perform the salvage work at any price, let alone the price they generated for this proceeding, they are not subject to such market constraints and have every incentive to deflate the NLV of the Line.

In addition, the Port’s witness Mr. Davis does not appear to have any real world experience in the actual supply, salvage, distribution, or resale of railway material. His resume indicates that his railroad responsibilities prior to becoming a consultant were confined to track and bridge inspection, maintenance, and repair – none of which involves valuing, supplying, distributing, or purchasing new or used railroad materials. In contrast, I have 22 years’

experience in such matters, in addition to another 10 years' experience in other railroad positions. The Unitrac and LB Foster representatives who provided evaluations of Mr. Davis' analysis have a combined 55 years of actual commercial experience in these areas.

I believe that the best way to determine the real market value of a set of assets is to identify the price that a knowledgeable, willing, and able buyer offers, and a similarly knowledgeable seller is willing to accept. Foster and Unitrac are such sellers who have submitted actual firm offers. As the person most responsible for buying and selling rail materials on behalf of CORP and RailAmerica, I would seriously consider an offer for the Coos Bay Subdivision track assets at an amount in the range of the Foster and Unitrac offers (presented by persons with long experience developing real world purchase offers and then performing track asset salvage jobs in accordance with those offers). In the current market, I would not seriously consider an offer in the range of the RLB NLV, which is approximately 50% less than the range of the actual purchase offers

B. The Port's NLV Estimate Misclassifies the Rail and Steel OTM Assets.

The Port's NLV estimate misclassifies steel assets, which results in a significant undervaluation. I was surprised to read that the Port's consultants assumed that none of the rail on the entire Coos Bay Subdivision was of relay quality. As RLB witness Mr. Davis indicates, "relay rail is the highest value, and consists of rail that can be re-used in other railroad applications." I agree with Unitrac's Mr. Wilhoit, who indicated in his evaluation of the RLB NLV that it is extremely unlikely that any rail line of more than 100 miles would contain no relay quality rail. See Wilhoit Letter at 3, Attachment 1. And, in fact, Mr. Wilhoit's inspection identified relay quality rail totaling approximately 24 percent of the rail in place along the Line See Attachment 1 at 3.

As Mr. Wilhoit shows, Mr. Davis' explanations provide no meaningful support for his assumption that the Line contains no relay rail. *See* Attach. 1 at 3-4. Neither the age of the rail nor the fact that it may have been used in more than one location is a determinant of whether rail is of relay quality. *See* Attachment 1 at 3-4. LB Foster's Mr. Steininger further explains that the age of rail is only relevant to a relay quality determination if the rail was rolled prior to 1936 and did not use a "control cooling" process. *See* Attachment 2 at 2. Mr. Davis claims that some of the Line's rail may date to the 1950s, not to 1936. More important, Mr. Davis' own supporting table, titled "Summary of Rail Evaluated," indicates that all of the main track he evaluated was control cooled. *See* V S Davis, Attachment 1.

Mr. Steininger's analysis also refutes the final reason Mr. Davis offers for his across-the-board assumption that none of the rail is relay quality – namely, that rail is not classified as relay if it has more than ¼" of wear. Based on his experience, Mr. Steininger states that "relay rail with greater than ¼" wear is supplied to the marketplace on a regular basis." Attachment 2 at 2. Mr. Steininger concludes that Mr. Davis' assertion is not relevant anyway, because "all of the rail that LB Foster classified as relay quality had ¼ [inch] wear or less." Attachment 2

Unitrac's detailed analysis concludes that the Port's NLV estimate misclassified approximately 5,855 net tons of relay rail as re-roll or scrap quality. *See* Attachment 1 at 4, and Chart 1. LB Foster's independent analysis found that Mr. Davis' incorrect assumption that none of the rail is relay quality understates the Line's NLV by \$5.5 million. This correction alone would increase the Port's NLV estimate from \$8.9 million to \$14.4 million.

The Port's witness also completely misclassified the tie plates on the line. Instead of the three types of relay tie plates "assumed" by Mr. Davis (none of which are actually present on the Line) there are *six* types and sizes of relay-quality tie plates. *See* Attachment 1 at 5. Mr. Wilhoit

explains that the prices Mr. Davis used to value relay tie plates are also significantly lower than actual market prices. As a result of these erroneous assumptions, the Davis estimate understates the market value of the relay tie plates by \$1,872,534. *See* Attachment 1 at 5 and Charts 2-3.

C. The Port's Valuation of Track Assets Uses Prices That Grossly Understate the Market Value of Those Assets.

The Port's estimate uses incorrect and outdated metals prices to assign values to the Line's non-relay quality steel track and OIM. As a result of those errors, the Port's estimate understates the NIV of the Line by a large margin.

1. The Port Uses Outdated Historical Price Indices Rather Than Current Actual Market Values for Steel Rail Assets.

The Port's estimate of the value of scrap and re-roll steel track assets on the Line uses outdated data that pre-dates the large increase in metals prices since May 2008. The result is that the Port's NIV estimate substantially undervalues the non-relay quality rail and OIM assets of the Line

One of my job responsibilities is to monitor market prices for steel rail and OIM materials. Based on my continuing review, I know that metals prices have increased significantly in 2008, particularly during the second and third quarters. For example, the steel price that I use as a benchmark for the floor on rail scrap prices when I evaluate bids for the purchase or sale of scrap rail – the American Metals Market index for number 1 busheling scrap steel delivered in Chicago – increased steadily from \$600 per gross ton in early April, 2008 to \$720 per ton in May, to \$780 per ton in early June, to \$890 per ton in mid-July, before declining slightly to \$850 per ton in late August. *See* Pettigrew workpapers, Chart of AMM Chicago index from April to August 2008. Thus, from early April to the present, the AMM index indicates that prices for scrap steel increased by approximately 42%. Similarly, the AMM index for "scrap rail crops, 2-foot maximum" went from \$615 per gross ton in early April 2008, to \$715 per ton in

May, to \$780 in mid-June, dipped slightly to \$740 per ton in mid-July and ended at \$830 per ton in late August, representing an increase of approximately 35%. *See* Pettigrew workpapers.

Mr. Wilhoit confirmed that market prices for railroad scrap metals have increased dramatically since April. Mr. Steininger stated that “the market prices paid for rail and OTM materials currently, in August 2008, is significantly higher than the historical [AMM] price published last April.”

In this market environment, scrap rail and OTM prices from April 2008 do not provide an accurate or reliable measure of current market value of those track materials today. In order to estimate scrap steel (including re-roll) asset values, RLB used prices from April 18, 2008. The Port does not explain why, in its July 11 Feeder Line Application, it used prices from several months earlier. The Port’s witness indicates that one of his price sources was “AMM Metal Market.” However, AMM publishes updated prices on a daily basis, so there was no reason to use stale historical data from that source. The only other independent source Mr. Davis identified was Foster. But Foster itself did not, and would not, use such prices in determining the NLV of the track assets on the Line. Foster’s General Manager Steininger evaluated the RLB NLV and found that its prices were “well below the prices that relay, re-roll, and scrap rail and OTM materials are sold for in the current market.” *See* Attachment 2 at 2. Mr. Steininger further stated that, in developing Foster’s purchase offer, he used actual current market prices, not the much lower prices Mr. Davis used. *See* Attachment 2 at 4 (“[T]he prices I use in my NLV calculations, and in developing LB Foster’s offer to purchase the Line, are based upon LB Foster’s actual market transactions and represent its real world knowledge of current market prices for those materials.”).

Mr. Davis does not explain exactly how he arrived at the prices he used. However, his assumed scrap prices do not appear to match the AMM Chicago prices. Based upon my review of the relevant AMM Chicago index for April 18, 2008, I have determined that he did not use any of those specific prices as his assumed scrap rail or OTM value. The following table summarizes arguably relevant AMM Chicago prices for steel rail materials (as I stated previously, I generally consider the No. 1 Busheling price to be the absolute rock bottom price floor for actual market prices for scrap rail metals, and would not consider any lower index price in the current market) for that date.³

Table I
AMM Historical Prices – Chicago April 18, 2008

	\$/Gross Ton	\$/Net Ton
No. 1 Busheling	\$600.00	\$536
No. 1 RR Heavy Melt	\$550.00	\$491
Rail Crops, 2' max	\$615.00	\$549
Rail Crops, 18" max	\$610.00	\$545
Rerolling rails	\$580.00	\$518
Other Track Material (OTM)	\$570.00	\$509

By contrast, the values Mr. Davis assigned to scrap rail and scrap OTM, respectively, were \$550 per ton and \$450 per ton. See V.S. Davis at 9; cf. Attachment 1 at 4 (Wilhoit opinion that if most relevant AMM index were used, Port's price for scrap OTM would have been \$600 per ton). As Table I indicates, the prices used by Mr. Davis are not supported by the April 18 AMM benchmark prices upon which he purported to rely.

I conclude that the Port used some sort of historical price estimates, which do not appear to reflect the contemporaneous historical AMM index prices, and assumed *current* prices several months later (in July-August 2008). More important, because of the significant increase in

³ The rail crop prices are effectively lower than busheling prices because of the additional cost to the seller of cutting the rails into the specified maximum length.

market prices from last April to the present, the theoretical prices used by the Port's witness Davis very substantially understate the actual current market value of scrap rail and OTM. See Attachment 1, Appendix (detail supporting Unitrac purchase offer, shows current market prices), Attachments 3, 4 (Foster purchase offer detail).

The prices used by Foster and Unitrac to develop their purchase offers provide strong confirmation that current scrap steel market prices are far higher than the prices assumed in the Port's NLV analysis. As Table II shows, RLB's reliance upon outdated (and undocumented) metals prices caused Mr. Davis to understate the value of re-roll and scrap materials by up to \$335 per net ton

Table II

Item	RLB April 2008 Price Estimate (\$/Net Ton)	Unitrac August 2008 Market Price (\$/Net Ton) ⁴	Foster August 2008 Market Price (\$/Net Ton)	Range of Difference Between Market Prices and RLB Est
90-lb scrap rail (jt)	450			
110 lb reroll rail (jt)	600			
113 lb scrap rail(jt)	450			
113 lb reroll rail (CWR)	600			
119 lb reroll rail (jt)	600			
132 lb scrap rail (jt)	450			
Scrap OTM	550			

⁴ Unitrac calculated the selling market price and then deducted Unitrac's costs (transportation, profit, etc.) to arrive at a net price. The first number for each item in the Unitrac column is its market price as of August 22, 2008. The second number is the net price after cost deductions. Because the RLB estimate deducts those costs separately, I believe the first Unitrac value should be used for purposes of comparison. Thus, for example, an "apples-to-apples" comparison for scrap OTM would compare RLB estimate of \$550/NT with Unitrac's price of \$820/NT.

2. The AMM Price Indices Substantially Understate Market Prices for Scrap Steel Rail and OTM.

I understand that the STB has sometimes relied upon American Metals Market ("AMM") price indices as evidence of the market value of scrap and reroll quality steel rail assets. Particularly in the current market, AMM indices significantly understate actual market values of such assets. In my experience, the AMM Chicago index prices are consistently lower, and often much lower, than the actual prices at which "scrap" steel rail materials sell in the marketplace. Therefore, while those indices provide convenient benchmarks for following general price trends, and the "Number 1 busheling" index provides a reasonable indicator of the absolute floor (or subfloor) on those prices, the indices' absolute values are not reliable guides to actual marketable prices. In the last year, AMM Chicago prices have consistently understated actual market prices for relevant rail scrap materials, often by substantial margins. Mr. Wilhoit of Unitrac confirms my observation and experience, stating that the AMM indices "significantly understate actual market prices and therefore do not truly reflect what reroll, scrap rail, and OTM sell for today." Attachment 1 at 2

During the last year and presently, the most relevant AMM price index for scrap steel rail and OTM has been the "No. 1 busheling" Chicago index. Other scrap and re-roll rail indices published by AMM simply do not reflect current market prices for this high-demand steel. As Mr. Wilhoit put it,

In today's market, railroad materials are not measured against scrap market values, but rather constitute a commodity of their own. With a very limited supply of available railway material, the demands of the market have increased their values to historical levels. When rail and OTM is sold as scrap, it is now considered as #1 bundles or a #1 busheling substitute. There is a tremendous shortage of raw material such as these because of the demand in the global market in which we now participate, and the AMM rail scrap prices significantly understate actual market prices.

Attachment 1 at 3. Based on my own experience in these markets, and the input of LB Foster's and Unitrac's experienced experts, I conclude that the AMM Chicago index prices significantly understate current market prices for re-roll and scrap rail and OTM.

Notwithstanding my strong view that AMM indices significantly understate the actual Chicago market prices for scrap rail and OTM and reroll rail, I applied AMM index prices to develop three alternative NLV estimates for each of the two Coos Bay Subdivision segments (the Abandonment Segment and the Vaughn-Danebo segment). For each segment, I prepared one NLV estimate based on the applicable AMM metals prices on the date CORP filed its abandonment application (July 14, 2008), one using the same AMM index price on August 22, 2008 (one week prior to the filing of this evidence), and a third using the average of the AMM values at those two endpoints. *See Attachments 5, 6, 7, 8*

To develop the number and quality of the track assets for these alternative estimates, I used the track asset inventory of the Abandonment Segment prepared by Marc Bader for purposes of obtaining an NLV estimate in the pending abandonment proceeding (*see* V.S. M. Bader, CORP Application, STB DK. No. AB-515 (Sub-No. 2)), and a similar asset inventory prepared by Mr. Bader in the same manner for the Vaughn-Danebo Segment. I then applied the AMM Chicago index price for No. 1. busheling on the relevant date (July 14 or August 22). Because there is no published index for relay rail prices, I used the average of the prices for each weight of rail used by Unitrac and Foster to develop their purchase offers. I believe such an average figure represents the best available objective estimate of current market price for relay rail. I similarly used the average of Foster and Unitrac prices for other NLV components (excluding bridge removal).

The resulting alternative NLVs range from \$21,414,587 to \$ 21,753,377 for the Abandonment Segment and \$3,415,207 to \$3,511,207 for the Vaughn-Dancbo Segment. *See* Attachments 5-6. These alternative estimates confirm the reasonableness of the NLV reflected in the Foster and Unitrac offers, and demonstrate that the NLV estimate preferred by the Port is vastly understated.

D. The Port's NLV Estimate Substantially Overstates Net Bridge Removal Costs.

The Port's witness assumes that two large bridges would have to be removed if the Line is abandoned. Without detailing or explaining his cost calculations, Mr Davis assumes removal of those bridges would reduce the NLV of the track assets of the Coos Bay Subdivision by more than \$7.5 million, or approximately 35% of his estimate of the gross liquidation value of the entire Line. *See* V.S. Davis at 11-12. This is far and away the largest cost item contained in Mr. Davis' estimate, exceeding all of his other costs combined. I find this unsupported estimated cost is not credible, and evidence developed for CORP by other experienced contractors and bridge experts shows Mr. Davis' estimate is far too high.

As I previously stated, I do not think the bridges would need to be removed if the Line were abandoned and salvaged. The Port's consultant Mr Davis acknowledges that "it is not unusual for bridges and culverts to be left in place in the event the line is abandoned or converted to a trail." V.S. Davis at 12. However, he then assumes, based on an assumption by a representative of the Port and an ambiguous statement from the Coast Guard, that bridges over the Siuslaw and Umpqua Rivers would have to be removed. Based on my experience in other abandonments and other contexts, and the importance of such bridges to potential future trail users, I continue to believe it is at best uncertain whether the bridges would be removed following abandonment. *See* Attachment 10 (Letter from Trust for Public Lands expressing

interest in purchasing Line for potential use as trail). In addition, in response to an inquiry from a representative of CORP, the Coast Guard indicated that even if it determines a bridge that obstructs a navigable waterway is no longer used for a land transportation purpose (which includes use as a trail), there are options short of removal of the entire span over the waterway. See Attachment 9 (responses of Coast Guard headquarters to questions from CORP representative)

Because of the disagreement about whether the Coast Guard might require two of the bridges be removed, I asked Foster to include in its purchase offer the cost of removing those bridges (over the Siuslaw River at MP 716.4 near Cushman and the bridge over the Umpqua River at MP 739.63 near Reedsport). Foster's "all-in" purchase offer includes the costs and material salvage values for removal of those two bridges, and therefore reflects a real-world firm offer to purchase the line if the job included removal of the two bridges. Because the costs of bridge removal and other related costs exceed the salvage value of the bridge materials, the net effect is to reduce Foster's purchase offer by \$2,000,000.⁵

Because Foster's net bridge removal cost determination is supported by an actual purchase offer for the line – including removal of the bridges – I find it very credible. In contrast, Mr. Davis' estimate, which he admits is "very preliminary," and is not supported by an offer to purchase the line, lacks credibility. If I were presented with an actual purchase offer for the Line using Mr. Davis' NLV, I would reject it based on the bridge removal cost estimate.

To further test the bridge removal cost estimate submitted by the Port, CORP solicited a third bid for removal of the two bridges and retained a leading bridge expert to analyze the

⁵ I note that Foster's offer for the Vaughn-Danebo Segment included an additional cost in the "bridges" category of \$250,000. See Attachment 4. It is not clear what costs account for this amount, as both of the bridges that are candidates for removal are located on the Abandonment Segment.

bridge component of Mr. Davis' testimony. RL Staton Companies, a Eugene, Oregon demolition company with extensive experience in dismantling and removing bridges over water and highways, conducted physical inspections of the Siuslaw and Umpqua River Bridges and developed proposals for removing both bridges. Staton has presented an offer to remove the portion of both bridges over the navigable waterway, using appropriate methods and safeguards, for a total price of \$2,065,790. *See Attachment 8.*⁶ Thus, yet another actual proposal by an experienced contractor demonstrates that the subject bridges can be removed for approximately 40 percent of the theoretical estimate generated by the Port's consultant, Mr. Davis.

The real world proposal developed by an experienced bridge demolition company based on actual physical inspection of the bridges provides a far more reliable estimate of the cost of removing the two bridges than the "very preliminary" and unexplained estimate of the Port's consultant. The fact that a real world contractor's proposal is less than half the unsupported estimate furnished by Mr. Davis convinces me that Mr. Davis' estimate is grossly overstated.

Another flaw in Mr. Davis' bridge removal estimate is that he assumes that the purchaser of the Line would need to be required to remove both bridges in their entirety, including long wooden trestle approach segments that have nothing to do with the navigable waters of the rivers. As I understand it, the basis for Mr. Davis' assumption that the bridges would need to be removed is that the Coast Guard would require removal of the bridges' "obstruction" of the

⁶ Staton's offer also includes a proposal to remove both bridge structures in their entirety (including the portions over land) for a total of \$3,029,490. *See Attachment 8.* Acceptance and use of all "bid items" yields Staton's bid for removing the entire structures. Staton advised CORP that severing the last two items ("Wood trestle over Wet Land" and "Bridge over Roads/Highways"), deducting their cost and using the costs for all of the remaining items yields Staton's bid for removal of the bridge spans over the waterways only. Both in our discussions and in Staton's bid letter, Staton made clear that it was offering to perform either the removal of the entire structures, or only the spans over the waterway, and that its bid for removal of the bridges over the water was the total bid less the last two components (wood trestles over land and bridge over roads). *See id.*

rivers' "navigable waters " *See* V S Davis at 10. Attachment 6. Based on my discussions with RailAmerica's Director of Structures and Bridges (who is very familiar with the two bridges in question and inspected them the week of August 18, 2008), and our review of current photographs and engineering drawings of the bridges, I understand that large portions of the Siuslaw River Bridge are not over the river at all, but rather cross adjacent land and a road. *See, e g* , CORP Abandonment Application, STB Dkt. No. 515 (Sub-No. 2). Exhibit 4 at 33 (picture of portion of Siuslaw River Bridge section over land) That land is certainly not "navigable water," and there would not seem to be any basis for the Coast Guard to require removal of that portion of the bridge. Mr. Davis seems to acknowledge this common sense conclusion when he states that the Port's Martin Callery believes the Coast Guard would require removal of at least "the swing span portions of those bridges " *See* V S. Davis at 10.

If CORP (or the Line's purchaser) were required to remove only the portion of the bridges that cross the navigable waters of the rivers, it would not incur the costs for removing other portions of the bridge. Staton advised CORP that two components of the Staton bid apply only to segments of the bridges that do not cross the rivers themselves.⁷ Excluding those two components (for demolition and removal of wood trestles and bridges over roads) reduces the Staton Companies' bid by \$963,700. to \$2,065,790. This provides strong further confirmation that the \$ 2,000,000 cost for removal of the Siuslaw and Umpqua River Bridges that LB Foster

⁷ The two components that consider only positions of the structures that are over land (and thus do not obstruct the navigable waterway) are "Wood Trestle Over Wet Land" and "Bridge Over Road/Highways." CORP's parent company RailAmerica specifically asked Staton Companies to breakout the portions of the structures costs that are not over the navigable waterways in a fashion that would allow determination of Staton's bid for removal of only those portions over the waterway. As the Staton bid letter indicates, other components of the proposal are partially attributable to removal of the land portion of the bridge

used in its purchase offer (and which Foster developed independently of Staton) is reasonable and in the appropriate range.⁸

As a final test of the Port's bridge removal cost estimate, CORP retained another bridge removal engineer, Timothy J. Maloney of EKS, Inc., to provide an expert evaluation of Mr. Davis' bridge cost estimate. That expert, whose full analysis I understand will be included elsewhere in CORP's evidence, also concluded that Mr. Davis' estimate has many flawed assumptions and errors, which result in a very significant overstatement of the net cost of removing the bridges over the Siuslaw and Umpqua Rivers. The adjustments to Mr. Davis' estimate applied by bridge demolition expert Mr. Maloney would result in a net cost of removal of those sections of the bridges over navigable waterways of \$2,849,065. *See* V.S. Maloney at 2. Even if CORP were required to remove the Siuslaw and Umpqua River Bridges in their entirety, Mr. Maloney estimates that the net cost of doing so would be only \$4,244,346. *See* V.S. Maloney at 2.

Together, the Staton bid and the bridge removal cost included in the LB Foster purchase offer convince me that the market price for removal of the bridges over the Siuslaw and Umpqua Rivers is in the range of \$ 2 million to \$2.1 million. And, they show that the bridge removal cost assumption used by witness Davis for purposes of the Port's NLV is approximately \$5.5 million too high.

⁸ Using Staton's bridge removal bid, I also prepared one additional set of NLV estimates based on AMM metals price indices. *See* Attachment 7. Those estimates use AMM Chicago metals prices for July 11, August 22, and the average of those two dates, and also deducts the cost of removing the "over-the-waterway" spans of the Siuslaw and Umpqua River Bridges. Deducting that \$2,065,790 from the average AMM-based NLV estimates yields NLVs for the Abandonment Segment of \$19,348,797 to \$19,687,587.

E. Other Significant Flaws and Errors in the Port's Estimate

My examination of the Port's NLV estimate identified a number of additional flaws and errors. I will summarize two of the more significant flaws in this section. First, Mr. Davis plainly overestimated the cost of transporting of salvaged rail materials to sale destinations, primarily by using a grossly understand material lading weight of rail cars. Specifically, Mr. Davis assumed that rail cars that typically hold approximately 95-105 tons of scrap rail material could only hold approximately 77 tons. As Mr. Wilhoit explained in more detail, this assumption resulted in a substantial overstatement of the number of rail cars required to transport salvaged rail material to Chicago for sale, which in turn resulted in a \$ 442,385 overstatement of liquidation expenses. See Attachment 1 at 5 and Charts 1 & 2. In addition, inherent in Mr. Davis's transportation cost estimate is the assumption that a salvage company would transport all of the rail on the Coos Bay Subdivision – including the substantial quantities of relay rail that Mr. Davis incorrectly classified as scrap – all the way to Chicago.⁹ As Mr. Wilhoit explained, this assumption is probably not accurate, because when a company actually did this job, it likely would store the relay material at Eugene and ship it to customers from that location. See Attachment 1 at 5. Because scrap prices are so much higher in Chicago than on the West Coast, a seller would be willing to incur the additional transportation expense (which would be more than offset by the higher Chicago scrap prices) to transport scrap material to Chicago. This is not the case for relay material. Mr. Wilhoit conservatively estimated that Mr. Davis' incorrect assumption that relay material would be transported (as scrap) to Chicago overstates transportation expense by approximately \$140,000. I believe that the overstatement of

⁹ Mr. Davis misclassified all relay quality rail as reroll or scrap rail, so he does not expressly apply a transportation cost for relay quality rail. However, because he assumes all rail would be transported to Chicago, he effectively applied an additional excessive transportation cost to the misclassified relay rail.

transportation costs resulting from the assumption that relay rail would be transported to Chicago is likely higher than \$140,000, because in my experience buyers who purchase the rail (not the seller) generally pay the freight for transporting the rail to the site where it will be installed

Second, the Port's estimate substantially overestimates the percentage of scrap OTM that would be "lost" during salvage. Mr. Davis assumes that a full 20 percent of those materials would be lost during salvage. Based on my real world experience, Mr. Davis' assumed loss factor is much too high. As LB Foster's Mr. Steininger indicated in his evaluation of the Port's NLV estimate, a more realistic estimate is that five (5) percent of OTM scrap material from the Line might be lost (or otherwise be unusable for scrap resale) in salvage operations. *See* Attachment 2 at 3. Correcting this overstatement and applying market prices would increase the NLV of the Line by approximately \$1,608,540. *See* Attachment 2 at 3 and Chart 2.

* * * *

Based on my analysis and experience, I conclude that the NLV for track assets submitted by the Port in this proceeding is flawed in numerous critical respects and does not provide an accurate or meaningful estimate of the NLV of the track assets of the Coos Bay Subdivision. Because of these numerous flaws, the Port's NLV estimate could not be used as the market value, or other reasonable liquidation value, for those assets. The actual purchase offers obtained by CORP present much more accurate, market-based NLV for the track assets of the Coos Bay Subdivision

I, Alan Pettigrew, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this verified statement.


Alan Pettigrew

Executed on August 27, 2008



REDACTED

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REDACTED



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REDACTED



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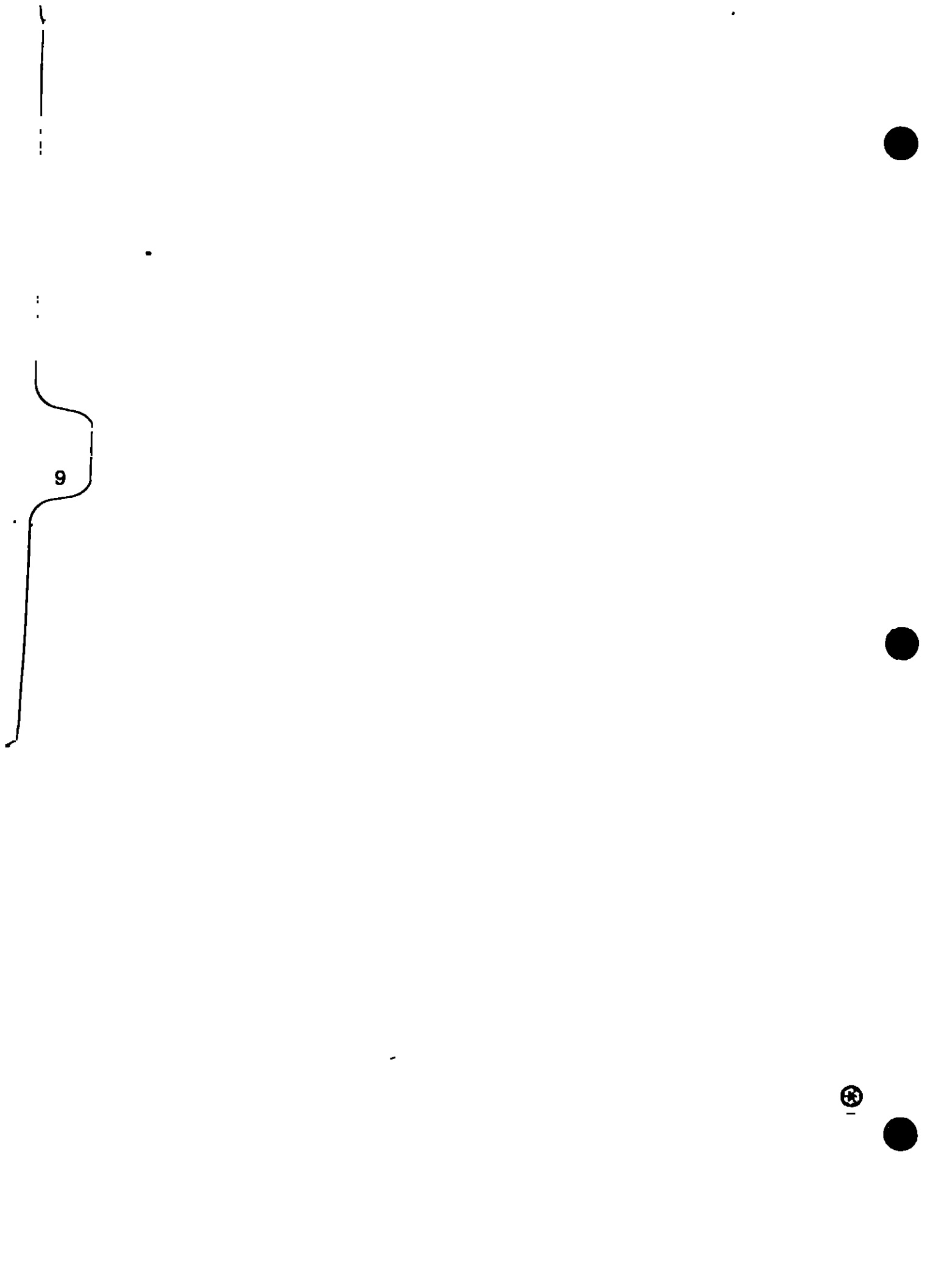
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-----Original Message-----

From: Alesia.J.Steinberger@uscg.mil [mailto:Alesia.J.Steinberger@uscg.mil]

Sent: Thursday, August 21, 2008 3:57 PM

To: Echikson, Thomas G.

Cc: ELgaaly, Hala; Hall, Frank; Den_Boer, Kim

Subject: Bridge Alteration Orders

Thank you for your inquiry. Please see the attached document which responds to your questions. If you have further questions, please contact us

Alesia Steinberger

Chief, Alterations & Drawbridge Operations

CG-54111

Office of Bridge Administration

U. S. Coast Guard

202-372-1515

-----Original Message-----

From: techikson@Sidley.com [mailto:techikson@Sidley.com]

Sent: Thursday, August 21, 2008 9:21 AM

To: ELgaaly, Hala; Sugarman, Shelly; Steinberger, Alesia; Patnaik, Jacob; Jaufmann, Josef; Den_Boer, Kim

Subject: Bridge Alteration Orders

Ladies and Gentlemen:

I have several questions regarding bridge alteration orders and would greatly appreciate hearing back from any of you who might be able to answer them. This regards a railroad bridge that will be "abandoned" for rail transportation. In such circumstances:

1. Am I correct that the the "abandonment" of a bridge for land (rail) transportation would not automatically result in a Coast Guard order to remove the bridge as an obstruction to navigation? Instead, would the procedures set forth in 33 C.F.R. Part 116 apply, including evaluation of the costs and navigational benefits of removal, as well as environmental and historic impacts?
2. Am I correct that if a determination is made that the abandoned bridge is an obstruction to navigation, the Coast Guard could order some alteration of the bridge short of complete removal?
3. Am I correct that the Coast Guard would at most require removal of that portion of the bridge within "navigable waters"? In other words, those portions of the bridge which span over wetlands or land are beyond

the Coast Guard's jurisdiction?

4. If the bridge is converted to trail use, would this trail use qualify as land transportation?
5. If the bridge is required to be removed, how long would the Coast Guard allow navigable waters to be obstructed (by removal equipment) during removal? In other words, would the obstruction from removal equipment need to be taken down each day, or could it remain in place for, say, a week while the removal effort were continuing?
6. And finally, does the Coast Guard require that coffer dams be used during the removal or alteration of the bridge or would turbidity curtains suffice?

Thank you in advance for any advice you can provide

Tom Echikson

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techikson@sidley.com

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1. Am I correct that that the "abandonment" of a bridge for land (rail) transportation would not automatically result in a Coast Guard order to remove the bridge as an obstruction to navigation? Instead, would the procedures set forth in 33 C.F.R. Part 116 apply, including evaluation of the costs and navigational benefits of removal, as well as environmental and historic impacts?

Should the Coast Guard find that a bridge over navigable waters is abandoned and no longer used for land transportation, the Coast Guard would contact the bridge owner and notify them that the bridge is considered in violation of federal law and to constitute an unreasonable obstruction to navigation. The bridge owner would be offered the following options:

- a) Return the bridge to an active transportation function. The bridge owner should contact the Coast Guard District Bridge office to negotiate a reasonable period to return the bridge to service. After this time is set, the Coast Guard will periodically monitor the bridge to ensure compliance.
- b) Should the bridge owner desire to retain portions of the bridge in the waterway after removal of the main navigation span, they should consult with the U. S. Army Corps of Engineers. Failure to obtain Corps' approval to leave parts of the structure in the waterway after it has lost its character as a bridge will subject the bridge owner to remove the bridge in its entirety down to or below the natural bottom of the waterway or such other elevation as deemed appropriate by the Coast Guard District Commander in consultation with the Corps of Engineers.
- c) Completely remove the bridge from the waterway at no expense to the Federal Government. The Coast Guard's involvement in the removal process will include early review of the proposed removal plan that will allow the Coast Guard to notify effected mariners and to ensure that the reasonable needs of navigation are met during the removal operations.

The Coast Guard only investigates bridges under 33 CFR 116, pursuant to alteration under the Truman-Hobbs Act that are actively used structures. An abandoned bridge does not constitute an active structure.

2. Am I correct that if a determination is made that the abandoned bridge is an obstruction to navigation, the Coast Guard could order some alteration of the bridge short of complete removal?

This option the outlined in option b) above.

3. Am I correct that the Coast Guard would at most require removal of that portion of the bridge within "navigable waters"? In other words, those portions of the bridge which span over wetlands or land are beyond the Coast Guard's jurisdiction?

Complete removal from the waterway, bank-to-bank. If the owner wishes to retain a portion of the bridge, see option b) above.

4. If the bridge is converted to trail use, would this trail use qualify as land transportation?

Yes, however the owner of the trail now has the responsibility of maintaining and operating the bridge. If the bridge has a movable navigation span, the trail owner is required to operate the movable span in accordance with 33 CFR 117.

5. If the bridge is required to be removed, how long would the Coast Guard allow navigable waters to be obstructed (by removal equipment) during removal? In other words, would the obstruction from removal equipment need to be taken down each day, or could it remain in place for, say, a week while the removal effort were continuing?

The bridge owner would need to coordinate the removal operations with the Coast Guard District Bridge Office and the local Coast Guard Captain of the Port to allow safe removal of the bridge while minimizing the effects on navigation.

6. And finally, does the Coast Guard require that coffer dams be used during the removal or alteration of the bridge or would turbidity curtains suffice?

This would be decided on a case-by-case basis and would be coordinated with the Coast Guard District Bridge Office and the local Coast Guard Captain of the Port.

10

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Todd N. Cecil
RailAmerica, Inc.
Vice President – Real Estate
1355 Central Parkway South
Suite 700
San Antonio, TX 78232

August 26, 2008

Re: Coos Bay Rail Line Abandonment Proceedings

Dear Todd:

This letter serves to confirm and summarize our meeting of August 25, 2008, regarding RailAmerica's pending application before the Surface Transportation Board to abandon its Coos Bay line from Cordes to Dancho.

As we stated in our meeting, should the abandonment proceed and should there be local support for such an undertaking, The Trust for Public Land would be very interested in entering negotiations with RailAmerica to purchase the rail corridor before it is abandoned, broken up, and its pieces sold. Our intention would be to facilitate the rail banking of the corridor, thereby preserving the community's ability to make decisions about future uses of the corridor, whether for trail, rail or other purposes.

We appreciate the opportunity to speak with you on this matter and to express our interest in working with you and with local communities to preserve the corridor.

Sincerely,

Owen Wozniak
Field Representative

MALONEY

**Oregon International Port of Coos Bay -- Feeder Line
Application - Coos Bay Line of the Central Oregon &
Pacific Railroad, Inc.**

As indicated below, I received assistance in the development of certain aspects of this statement from two experienced engineers from Felsburg Holt & Ullevig ("FHU," a consulting firm which specializes in transportation planning, traffic engineering, civil engineering design and transportation related environmental services), Transportation Engineer Cassandra Gouger and (for evaluation of environmental permitting costs) Project Manager Stephanie Sangaline. Descriptions of their relevant qualifications and experience are included in Attachment 2 to this Statement

As I explain below, I find that the bridge removal costs submitted on behalf of the Port of Coos Bay contains numerous flaws. As a result, the estimate grossly overstates the reasonable net cost of removing the railroad bridges over the Siuslaw and Umpqua Rivers. Based on my review and experience in bridge demolition and removal, and in consultation with FHU, I have developed a revised estimate of the net cost of removing those structures, which is summarized in the following chart (including removal of truss spans over navigable waterways and other sections that do not traverse waterways).

Chart 1
Overall Net Cost of Removing Siuslaw And Umpqua Structures

Total for Both Bridges	Port/Gene Davis Estimate	CORP/EKS Estimate	Difference
Total for Truss	\$6,106,977	\$2,849,065	-\$3,257,912
Other Sections of Bridge	\$1,421,523	\$1,389,234	-\$32,289
Total	\$7,528,500	\$4,238,299	-\$3,290,201

I conclude that a reasonable estimate of the net cost for removing the spans of the Siuslaw bridge over the navigable waterway is \$824,996, and a reasonable net cost estimate for removing spans of the Umpqua bridge over the navigable waterway is \$2,024,069. As reflected in the table above ("Total for Truss" column), my revised total estimated cost of removing the spans of the two bridges over navigable waterways is \$2,849,065.

I. THE INFORMATION PROVIDED BY THE PORT IS INSUFFICIENT TO SUPPORT ITS ESTIMATE AND IS AT A LEVEL OF GENERALITY THAT DOES NOT ALLOW MEANINGFUL DIRECT EVALUATION.

To evaluate the Port's NLV estimate for the two bridges, I reviewed the Verified Statement of Gene Davis submitted by the Port, and the few workpapers that Mr. Davis's "Bridge Removal Cost" that the Port produced in discovery in this proceeding. At the outset, I note that these very limited two pages of "workpapers" are inadequate to support Mr. Davis's calculations, as they simply list costs he assumed for major categories of tasks and aggregated processes, but provide no explanation of how he calculated or derived those costs, no backup documentation for those costs, and no other support for his cost calculations. As explained below, the high level of generality of Mr. Davis' bridge cost estimate and supporting material provided by the Port preclude meaningful direct evaluation or testing of its bridge removal net cost estimate.

A. General Flaws, Lack of Support, and Errors in the Port's Bridge Cost Estimates

The twenty "processes" listed in Mr. Davis' workpapers include eight lump sum cost estimates and nine processes whose cost is labeled "each." See Davis workpapers. However, the term "each" is no more specific than the lump sum estimates, as "each" is simply used for processes that are assumed to be identical and repeated multiple times. For example, Mr. Davis assumes the process cost to remove one pier is the same for all piers. He itemized pier removal costs as "each" and multiplied that item by the 10 piers that needed to be removed. There is thus no more specificity in the "each" items than in the "lump sum" items. It appears the "lump sum" and "each" process labels are used interchangeably, as some processes described as "lump sum" (for example "Cut up steel spans for transport to market") are multiplied by the number of times

they are performed to determine the total assumed cost in the same manner as the "each" processes.

Each of these general aggregated "processes" would have several component tasks, each of which consist of equipment, personnel, and logistics whose costs cannot be analyzed or verified because Mr. Davis provided no itemized breakdowns or support. At bottom, the Port and its consultant have not provided enough information to show that its bridge NLV estimate is reasonable or accurate, or to allow a detailed analysis of that estimate

The Port's estimate included only two at a unit cost: transportation costs and salvage values. Neither Mr. Davis' assumed salvage value of bridge metals, nor his estimated cost of transporting those materials, is consistent with my experience. Mr. Davis does not expressly state, in the bridge demolition portion of his statement, the location where he assumes the metal would be scrapped, so there is no basis for me to evaluate his estimate against real world salvage and transportation prices. Elsewhere in Mr. Davis' statement, he assumes that salvaged rail and other track materials would be scrapped in Chicago for the same price (\$450/ton) he assumes for the bridge scrap metal. Mr. Davis also assumed a cost for transportation of the scrap metal that would be much too high if the steel were sold for scrap in Oregon or the western region.

This is an example of how the lack of information and support provided by Mr. Davis prevents evaluation of his conclusions. Because I do not know the basis of his salvage value assumption, I cannot offer a rigorous analysis of that assumption, and can only state that the salvage prices appear erroneous and inconsistent with my experience and knowledge of the markets for bridge scrap metal. In particular, the salvage value and the transportation cost each appears to be overstated. Without more specific information, however, the amount of overstatement cannot be determined. Solely for purposes of developing an adjusted estimate of

net bridge removal cost using the Port's estimate as a starting point, I will use the assumed salvage values and transportation costs (resulting in a net value at \$390/ton) submitted by the Port's consultant.¹

As illustrated by the salvage value discussion above, the limited information provided by Mr. Davis is insufficient to allow a detailed analysis of many aspects of his estimate. Nonetheless, my review of the general information he provided identified several significant flaws in his analysis and assumptions. First, his estimates use the same lump sum cost for removal of rail and ties for both bridges even though one bridge is 3,400 feet long and the other is less than half that length, at 1,600 feet. Second, the tonnages Mr. Davis assumed for concrete and wood do not reconcile with the "Notes" supporting each estimate. For example, on the Umpqua Bridge (Bridge 739.68) estimate, numbers appear to be rounded up to the nearest hundred. *See* Davis workpapers. This degree of rounding causes significant errors in the estimate. The actual total weight of wood for the Umpqua bridge is 40 tons, but Mr. Davis assumed 200 tons for purposes of estimated removal and transportation costs.

Third, the Port's estimate grossly overestimates the cost of lead-based paint abatement. The only portions of the bridges that would require special measures for lead paint are the areas where the structure would be sheared on site. In order to address lead paint concerns, areas of loose paint and any areas to be sheared or cut on site would be painted with an encapsulating paint to prepare for shearing. The encapsulating paint is a liquid coating that dries to form a watertight jacket over the lead paint. After shearing, the trusses would be transported by barge to an off-site location for further shearing into appropriate sizes for transport. The metal could then be transported and sold for scrap without removal any additional removal of lead paint. The

¹ I do not endorse or accept those assumptions, and I believe they are likely incorrect. I would not use these salvage values and costs if I were developing an actual bid for this job.

short term need to ensure that lead-based paint will not escape into the environment would be fully addressed and satisfied by this approach.

My cost estimates for this process (using shearing and protective sealing paint) are based on means and methods commonly used and accepted in the industry. As a result of Mr. Davis' erroneous assumptions regarding lead paint abatement costs alone, the Port's estimate overstated steel span removal costs by approximately \$1,260,000.

Fourth, The Port assumed the demolition process would use cofferdams at each of the concrete piers in the water. Cofferdams are not necessary for this project and would be very expensive to construct. I would use an acceptable alternative, turbidity curtains, which are used to contain and control the dispersion of turbidity and silt generated in marine construction, pile driving, site work, and dredging operations. As my workpapers explain, turbidity curtains are "ideal for demanding applications whether dredging contaminated sediments or demolishing bridges." See Maloney workpapers. The curtains are reusable and I have prepared my estimate assuming that they would be reused in this project. Each of the two bridges would use a single curtain for removal of all concrete piers that are in the waterway. This curtain would be moved from pier to pier as removal progressed.

Fifth, the Port's assumed concrete transportation cost (for disposal) is too high. The Port's estimate of \$60 a ton equates to an approximate thirteen (13) hour round trip haul. This is unrealistic considering a typical semi truck costs \$90 per hour, including driver, gas and maintenance, and carries between 20 to 23 tons per haul, or \$4.50 per ton per hour. The concrete material is salvageable, recyclable and/or can be used typically near its original site as embankment material. My revision assumes 1.5 hour haul time for concrete transit, plus an associated fee of \$10/load

Sixth, FHU has determined that the Port's estimate substantially overstates likely permitting costs. FHU's Stephanie Sangaline provided a critique on the permitting costs. FHU has extensive experience with National Policy Act (NEPA) process, Army Corps of Engineers Permits, and environmental regulators such as Clean Air Act, Clean Water Act, Endangered Species Act, and National Historic Preservation Act. Ms. Sangaline determined that permitting costs have been over estimated by the Port, mostly due to the erroneous assumption that an Environmental Assessment would be required. In addition, the person who provided a permitting cost estimate to the Port stated that it was based "on the Coos Bay Railroad Bridge only." This is an entirely separate bridge that is not involved in this case, and differences between the location and circumstances of the Coos Bay Bridge and the Siuslaw and Umpqua River bridges may account for some of the overstatement of permitting costs for removal of the two river bridges.

The Coast Guard's regional office (District Chief Bridge Section Austin Pratt) has advised FHU that, if the Coast Guard required removal of either bridge, it would not require a permit for that removal. *See also* Maloney workpapers. Because I assume that CORP would not seek permission to leave any portion of the bridge over the navigable waterway in place, there would be no "alternatives" to assess or discuss. Based on the foregoing information and assumptions and discussions with FHU, a conservative approach would assume that CORP might be required to seek an individual permit with the Army Corps of Engineers. The Coast Guard has further advised us that because it does not require a permit for bridge removal, it relies on the Corps to oversee and coordinate any agency approval that may be required. An updated cost estimate for permitting based on these assumptions has been prepared by FHU with these

assumptions. *See Attachment One* (total permit costs estimated at \$150,000, or \$75,000 each bridge)

Because the Port failed to provide specific information sufficient to allow a direct analysis or evaluation of its bridge demolition and removal cost estimate, my staff and I developed our own independent cost estimate for demolition and removal of the bridges.

I based my analysis on CORP track charts, numerous recent, detailed photographs of the bridges, my 18 years of experience as a railroad and bridge contractor, and consultation with FHU (who worked with RailAmerica's Director of Structures and Bridges William Richl). The remainder of this statement explains my adjusted estimate, compares it with the generalized estimate submitted on behalf of the Port, and explains the several flaws and erroneous assumptions that can be identified in the Port's generalized estimate.

II. DESCRIPTION OF THE BRIDGES AND ASSUMPTIONS USED TO DEVELOP EKS ESTIMATE OF NLV OF BRIDGES

Below, I discuss cost estimates for the removal of the entire structure of both bridges, even though the truss spans are the only portions over navigable water, which I understand is the most the Coast Guard might require CORP to remove. Therefore, cost comparisons between the restated costs to Coos Bay's costs for the entire structure as well as the truss spans alone are included.

A. Bridge Parameters Used to Develop EKS Estimate

In order to develop accurate removal cost estimates, it is important to start with accurate parameters of the bridges to be demolished and removed. Mr. Davis provided no such information for review or analysis, which again precludes direct evaluation of his bridge removal cost estimate. Based on all of the sources described above, I determined that the relevant spans

and lengths of the two bridges, which are essential to estimating the costs of bridge removal, are as follows.

Bridge 716.40 (Total length of 3,378 feet) (over Siuslaw River)

- 1 span Thru Plate Girder – 68 feet
- 9 spans Open Deck Pile Trestle – 105 feet
- 1 span Truss – 200 feet
- Swing Span – 295 feet
- 1 span Truss – 200 feet
- 170 spans Open Deck Pile Trestle – 2510 feet

Bridge 739.68 (Total length of 1,578 feet) (over Umpqua River)

- 4 span Open Deck Pile Trestle – 60 feet
- 8 spans of 125 foot Truss – 1,000 feet
- Swing Span – 348 feet
- 1 span Truss – 125 feet
- 4 span Open Deck Pile Trestle – 60 feet

Based on bridge inspection reports and information provided to FHU's Cassie Gouger by RailAmerica Director of Structures Bill Richl, we developed the following additional detail and clarifications concerning the parameters of the bridges' piers and abutments.

• **Bridge 716.40 has 184 spans, with the following parameters:**

- 1 span Thru Plate Girder – 68 feet
 - 1 concrete abutment
 - 1 steel pier
- 9 spans Open Deck Pile Trestle – 105 feet
 - 9 wood piers
- 1 span Truss – 200 feet
 - 2 concrete piers
- Swing Span 295 feet
 - 1 concrete center pier
- 1 span Truss – 200 feet
 - 2 concrete piers
- 170 spans Open Deck Pile Trestle – 2510 feet
 - 170 wood piers/abutment
- Total Piers by Type
 - 6 concrete piers/abutments
 - 1 steel pier at TPG
 - 179 wood piers

- **Bridge 739.68 has 19 spans, with the following parameters:**
 - 4 span Open Deck Pile Trestle – 60 feet
 - 4 wood piers/abutment
 - 8 spans of 125 foot Truss – 1,000 feet
 - 9 concrete piers
 - Swing Span – 348 feet
 - 1 concrete center pier
 - 1 span Truss – 125 feet
 - 2 concrete piers
 - 4 span Open Deck Pile Trestle – 60 feet
 - 4 wood piers
 - Total Piers by Type
 - 12 concrete piers
 - 8 wood piers

B. Other Necessary Assumptions Used in Developing Revised Estimate

Mr. Davis' very limited workpapers describe only a few of the assumptions that would be necessary to develop a meaningful estimate of the net costs of removing the two bridges. Below I summarize those assumptions that I found acceptable and used in developing a revised estimate, and clarify other assumptions that appear to underlie Mr. Davis analysis.

1. Accepted Assumptions.

I accepted Mr. Davis assumption that the bridge truss spans weigh approximately 1.5 tons per foot. I also accepted his assumption that thru-plate girders weigh approximately .5 tons per foot.

2. Restated Estimate Assumptions and Clarifications

I also made the following additional assumptions. Tie removal costs are included with the span removal costs. Because the ties are assumed to have salvage value, no disposal costs are included. This is consistent with Port's bridge removal estimate, which did not include any tie disposal cost. I assumed that rail and other materials are removed by the salvage company prior to demolition of the bridge, which I understand is consistent with the purchase offers CORP has received from two rail materials salvage companies. This avoids double counting of that

material in the overall estimate of the N.I.V of the track assets of the Line. I assumed a 1.5 hour round trip haul as the basis for concrete disposal cost estimates.

III. ESTIMATE FOR REMOVAL OF THE BRIDGE 716.40 OVER SIUSLAW RIVER NEAR CUSHMAN, OREGON

A. Quantity Errors in the Port's Removal Cost Estimates.

A number of the quantity assumptions and estimates used in the Port's estimate are incorrect. Below, I summarize some of the more significant errors in the Port's estimate, and explain adjustments I made to correct those errors.

The Siuslaw structure (including lengthy approaches that are not over the waterway) has 179 timber spans, but the Port's estimate considered only 161 of those spans. I corrected this error by estimating the cost for the 170 span approach, and the cost for the 9 span timber section of the bridge separately. The Port assumes there are five concrete piers under the steel spans when there are actually six (one is the thru plate girder abutment). My estimate corrects that erroneous assumption.

I believe that Mr. Davis' concrete pier size assumptions are much too high. The Port's consultant estimates a pier at 20 feet wide, 40 feet deep and 30 feet tall. Based upon review of information provided by Rail America, I find this estimate grossly overestimates the volume of concrete. I estimate that the 11 truss span piers are 8 feet wide by 20 feet deep and 30 feet tall, and that the swing span pier is 20 feet by 20 feet by 30 feet tall. In order to estimate the height of necessary concrete removal, I scaled the low chord of the bridge to the water surface, 17 feet, and added the depth of the dredging required in this channel of 12 feet, resulting in a total of 29 feet. I then added a one foot buffer to allow for dredging operations. I estimated the thru plate girder abutment at 4 feet by 16 feet by 20 feet. Together, the adjustments described in this paragraph support my estimate that the six concrete piers contain 1,203 cubic yards of concrete.

I adjusted wood timber sizes on the bridge based on bridge inspection reports and information provided by Cassie Gouger of Felsburg Holt & Ullevig. RailAmerica's Director of Structures Bill Riehl is responsible for maintaining CORP bridges, and he provided additional information based upon his inspection of the Siuslaw and Umpqua bridges the week of August 18, 2008.

Mr. Davis also did not discuss several other important factors affecting materials quantities, and his apparent failure to consider these factors may have been the cause of some of his mis-estimates of quantities of wood and other materials. For example, the stringers across the span are 2 sets of 4 stringers centered under each rail. The individual stringers are 9 inches wide by 18 inches high, so the amount per foot of wood bridge is nine square feet. The bents consist of caps, piles and braces. The Port's estimate considered only the piles. I calculated the following bent dimensions and used them in my cost estimate:

- Caps = 14" x 14" x 12' or 14 cubic feet each
- Piles = 14" x 14" x 395' (total length from bridge inspection report)
- Braces = 2 - 4" x 8" by 15' for each bent.

The Port's estimate did not consider the removal of wood fenders on the swing span. I estimate that the fender skirting has a volume of 409 cubic feet, which includes the skirting cross timbers and the pile bracing. I estimate that 125 fender piles (12" diameter) would be removed. Finally, Mr. Davis' estimate did not specify the weight of the timber. We have estimated the railroad timbers to weigh 67 pounds per cubic foot, based on our experience. Based on that unit weight, the timber spans consist of approximately 1,575 tons of timber and the swing span fender is 80 tons.

B. Cost Comparison for Siuslaw River Bridge.

The following Chart 2 illustrates the differences between my estimated net removal costs for the Siuslaw Bridge and the estimate submitted by Mr. Davis on behalf of the Port, organized

according to the general cost categories used in the Port's estimate I did not include any costs for rail removal as discussed above. Costs for tie removal and cleanup are included in the detailed costs of the other individual cost items. See Maloney workpapers.

Chart 2

Item	Port/Davis Estimate	CORP/Maloney Estimate	Difference
Permitting	\$207,000	\$75,000	-\$132,000
Mob & Demob	\$200,000	\$323,793	\$123,793
Remove Rail	\$15,000		-\$15,000
Remove Ties	\$15,000		-\$15,000
Cofferdam	\$275,000	\$58,404	-\$216,596
Truss Spans (See Chart 4)	\$1,842,000	\$1,095,471	-\$746,529
TPG Span	\$7,500	\$30,254	\$22,754
Timber Spans - Section 1	\$1,014,000	\$52,470	-\$961,530
Timber Spans - Section 4		\$1,006,567	\$1,006,567
Clean Site	\$50,000		-\$50,000
Salvage Steel - Truss	-\$540,000	-\$470,250	\$69,750
Salvage Steel - TPG		-\$15,300	-\$15,300
Total	\$3,085,500	\$2,156,410	-\$929,090

Another way to identify the areas in which my estimate differs from that provided by Mr. Davis is to review costs organized by span types, as in Chart 3 below.

Chart 3

Item	Port/Davis Estimate	CORP/Maloney Estimate	Difference
Truss over Navigable Water ²	\$1,755,030	\$824,996	-\$930,034
Thru Plate Girder over Road	\$26,437	\$19,219	-\$7,218
9 span Timber Pile Trestle	\$63,396	\$64,467	\$1,071
170 span Timber Pile Trestle	\$1,240,638	\$1,247,728	\$7,090
Total	\$3,085,500	\$2,156,410	-\$929,090

As Chart 3 illustrates, the largest difference is attributable to the truss span removal costs. The following Chart 4 lists the differences between the costs I developed and those submitted by Mr. Davis for the several processes that are components of the overall cost of truss removal. The

² The "Truss over Navigable Water" item includes the truss span cost in Chart 4 plus the cost of cofferdams, steel salvage value and a portion of the mobilization, demobilization and permitting. See workpapers, including *Maloney 082508.xls*, for details

lead abatement and transportation cost for concrete disposal make up most of the cost differences between estimates

Chart 4

Item	Port/Davis Estimate	CORP/Maloney Estimate
Truss Spans		
Remove Truss spans	\$450,000	\$329,472
Remove Piers	\$375,000	\$439,642
Abate Lead-Based Paint	\$450,000	\$120,686
Cut up for Transport	\$45,000	\$0
Transport Steel to market	\$72,000	\$62,700
Transport Concrete to disposal	\$450,000	\$0
Remove Fender		\$29,674
Install Dock		\$104,961
Total	\$1,842,000	\$1,095,471

I have included costs for cutting up the steel for market and transporting to disposal within the “Remove Piers” detailed costs.

IV. BRIDGE 739.68 OVER UMPQUA RIVER NEAR REEDSPORT, OREGON

A. Quantity Estimate Errors for the Umpqua River Bridge.

As summarized below, Mr. Davis made erroneous assumptions in estimating Umpqua River structure materials quantities that are very similar to the errors he made in estimating quantities for the Siuslaw River structure. Mr. Davis’s estimate that the bridge’s steel truss spans are 1,220 feet in length is inconsistent with CORP bridge lists and inspection reports. As discussed above, the actual length of those spans is approximately 1,473 feet. There are 8 timber spans on the bridge. Mr. Davis found only 7 of those spans. There are eleven steel spans (counting the swing span as two) instead of the eight assumed by Mr. Davis.

Mr. Davis made several erroneous assumptions concerning the Umpqua River structure’s concrete piers. There are 12 concrete piers under the steel spans instead of the ten assumed by Mr. Davis. His assumptions regarding concrete pier size assumptions, that each pier is 20 feet

wide, 40 feet deep and 30 feet tall. is much too high. Cassie Gouger provided the actual dimensions of the piers for this structure based on information provided by RailAmerica. The piers are 8 wide by 20 feet deep and 42 feet tall. I developed the length of the concrete removal by scaling the low chord of the bridge to the water surface, 18 feet, and adding the depth of the dredging required in this channel of 22 feet, resulting in 40 feet. I also added a two foot buffer to allow for dredging operations. The resulting volume of concrete to be removed is 3,360 cubic yards.

As with the Siuslaw estimate, the wood timber quantities Mr. Davis apparently estimated for the Umpqua bridge contained several significant errors. Here again, I adjusted wood timber sizes on the bridge based on bridge inspection reports and information relayed by FHU from RailAmerica's Director of Structures Bill Riehl (who inspected the Umpqua bridge the week of August 18, 2008). According to the inspection reports, ties on the Umpqua bridge are 9" x 8" x 10'. Stringers across the span are 2 sets of 4 stringers centered under each rail. The individual stringers are 9 inches wide by 18 inches high, so the amount per foot of wood bridge is nine square feet. The bents consist of caps, piles and braces. Coos Bay only detailed the piles. The bents have the following dimensions:

- Caps = 14" x 14" x 12' or 14 cubic feet each.
- Piles = 14" x 14" x 395' (total length from bridge inspection report)
- Braces = 2 – 4" x 8" by 15' for each bent

Mr. Davis failed to take into consideration wood fenders on the swing span has wood fenders that would be removed. The fender skirting is estimated at 476 cubic feet, which includes the skirting cross timbers and the pile bracing. I estimated that 146 fender piles (12" diameter) would need to be removed. Because railroad timbers typically weigh 67 pounds per

cubic foot, the timber spans weigh approximately 60 tons of timber and the swing span fender is approximately 131 tons.

B. Cost Comparison for Umpqua Structure

Chart 5 uses Mr. Davis' general processes to compare the cost estimates he submitted on behalf of the Port with the estimates I developed for CORP. I did not include any costs for rail removal as discussed above. Costs for tie removal and cleanup are included in the detailed costs of the other individual cost items. See Maloney workpapers.

Chart 5

Item	Port/Davis Estimate	CORP/Maloney Estimate	Difference
Permitting	\$207,000	\$75,000	-\$132,000
Mob & Demob	\$200,000	\$312,108	\$112,108
Remove Rail	\$15,000		-\$15,000
Remove Ties	\$15,000		-\$15,000
Clean Site	\$50,000		-\$50,000
Cofferdam	\$475,000	\$134,797	-\$340,203
Truss Spans (See Chart 7)	\$4,284,000	\$2,510,428	-\$1,773,572
Timber Spans	\$52,000	\$44,057	-\$7,943
Salvage Steel	-\$855,000	-\$994,500	-\$139,500
Total	\$4,443,000	\$2,081,889	-\$2,361,111

Here again, at a macro level, the largest cost differences between the cost estimate I developed and that submitted by Mr. Davis are attributable to costs of cofferdams and truss spans, with the truss spans accounting for the majority of the cost difference. Chart 6 compares the Port's estimate and my estimate, categorized by type of bridge span. Chart 7 compares the truss removal cost estimates of the two parties, broken down into the component processes used by Mr. Davis

Chart 6

Item	Port/Gene Davis Estimate	CORP/EKS Estimate	Difference
Truss over Navigable Water ³	\$4,351,948	\$2,024,069	-\$2,327,879
8 span Timber Pile Trestle	\$91,052	\$57,820	-\$33,232
Total	\$4,443,000	\$2,081,889	-\$2,361,111

Chart 7


Item	Port/Davis Estimate	CORP/Maloney Estimate
Truss Spans		
Remove Truss spans	\$1,200,000	\$737,961
Remove Piers	\$750,000	\$1,229,473
Abate Lead-Based Paint	\$1,200,000	\$267,422
Cut up for Transport	\$120,000	
Transport Steel to market	\$114,000	\$132,600
Transport Concrete to disposal	\$900,000	
Remove Fender		\$28,508
Dispose of Fender Timber		\$13,450
Install Dock		\$101,015
Total	\$4,284,000	\$2,510,428

In summary, I found Mr Davis' bridge removal cost analysis flawed and unsupported.

The revised analysis I developed estimates the net removal cost of the bridge spans over navigable water at \$2,849,065, consisting of \$2,024,069 for the Umpqua River bridge and \$824,996 for the Siuslaw River bridge.

³ The Truss over Navigable Water cost includes the truss span cost in Chart 4 plus cofferdams, steel salvage and a portion of the mobilization, demobilization and permitting. See workpapers, including *Maloney 082508.xls*, for details.

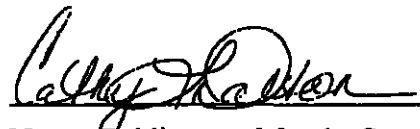
I, Timothy J. Maloney, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified to file this verified statement.



Timothy J. Maloney

Executed on August 27, 2008

Subscribed and Sworn to before me this 27th day of August, 2008

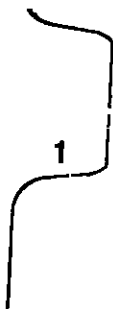


Cathy E. Lutton

Notary Public in and for the State of Colorado; County of Douglas



My commission expires 4/22/2012



2





Timothy J. Maloney

Professional Experience

Edward Kraemer & Sons, Inc.
Colorado Regional Manager

2002 to Present

Representative Projects Include (complete list available upon request)

- \$ 83 MM Galena Creek Project – Nevada DOT – Reno, NV - 4 bridges, 3 miles of roadway preparation for new alignment of I-580
- \$ 92 MM Snowmass Canyon Project – Colorado DOT – Snowmass, CO– 6 bridges, including two each CIP Post Tensioned 6-span bridges
- \$ 57 MM I-25 / Weld County Project – CDOT – Erie, CO - 7 miles of road widening, 5 bridges – demolition of UPRR Span over I-25
- \$ 31 MM SR 260 / Kohl's Ranch Project – Arizona DOT – Payson, AZ - 3 miles of road reconstruction, 5 bridges, including 2 each 4 span CIP post tensioned bridges
- \$ 26 MM I-25 / Broadway Viaduct – CDOT – Denver, CO – CDOT Project Management Award – Included demolition of existing I-25 over BNSF/UPRR
- \$ 20 MM I-76/120th Ave Interchange – CDOT – Brighton, CO – CDOT Project Management Award – includes 6-span over BNSF RR
- \$ 16MM I-270 Flyover – CDOT – Denver, CO – 2200 lf curved Precast, Post Tensioned spliced girder viaduct
- \$ 7 MM Fish Screen Facility – Bureau of Reclamation – Grand Junction, CO
- \$ 4 MM US-36/ McCaslin Pedestrian Overpass – RTD Park'n'Ride Facility – Louisville, CO
- \$ 3 MM Lionshead Skier Bridge – Vail Resorts – Vail, CO

Edward Kraemer & Sons, Inc.
Senior Project Manager

1998 to 2002

- \$ 11 Million Millennium Bridge / 16th St Mall Extension – cable stay pedestrian bridge over BNSF / UPRR mainline – Central Platte Valley Metropolitan District – Denver, CO
- \$ 2.2 Million Lower Colfax over South Platte River – bridge replacement – City & County of Denver – Denver, CO
- \$ 9.8 Million I-70/ Hidden Valley Interchange – replacement of five bridges, roadway rehabilitation – Colorado Dept of Transportation – Idaho Springs, CO
- \$ 1.0 Million Soda Creek Bridge Replacement – Co Department of Transportation – Evergreen, CO

- F. H. Paschen Group** 1992 to 1998
Project Manager / Estimator
- \$ 40 Million I-294 Bridge Replacement and Roadway Widening – Illinois State Tollway Authority - Bensenville, IL
 - \$ 1.6 Million North Ave Pedestrian Underpass – City of Chicago – Chicago, IL
 - \$ 6.8 Million Columbus Drive Bridge Replacement – Indiana Dept of Transportation – East Chicago, IN
 - \$ 2.7 Million Ogden Ave Viaduct Demolition – City of Chicago – Chicago, IL
 - \$ 3.2 Million Fox River Bridge Replacement – Illinois Dept of Transportation – Oswego, IL
 - \$ 10.6 Million Sanitary Sewer System Rehabilitation – Department of Navy - Great Lakes, IL
- J.H. Pomeroy & Co.** 1989 to 1992
Project Engineer
- \$ 16 Million Howard LRT Maint Facility – Chicago Transit Authority
 - \$ 11 Million Howard East Light Rail Train Yard – CTA
- Turner Construction Co.** 1988
Assistant Project Engineer
- \$ 300 Million United Airlines Terminal, O'Hare Airport, Chicago, IL

Education **University of Notre Dame** **South Bend, IN**
Bachelor of Science, Civil Engineering **May, 1990**

**Professional
References**

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Transportation Manager
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Denver, CO 80203
(303) 764-1538



Cassandra Gouger, PE

Transportation Engineer

Education

B S., Civil Engineering, Purdue University, 1993

Professional Affiliations

American Railway Engineering and Maintenance of Way Association (AREMA)

Registration

Professional Engineer—Colorado, Illinois, and Wyoming

Background

Ms Gouger has 16 years of railroad experience with private consulting firms in main line, yard design, and engineering projects. She has participated in design, preparing construction plans and specifications, developing contract documents, and performing construction management.

Project Experience

Rail

2 mile siding, Campbell, Wyoming

Supervised and assisted design team in developing construction documents for 2 mile siding for BNSF along their high density coal route.

Vesta Rail Spur, Windsor, Wyoming

In charge of preparing construction plans and bid documents for a rail spur off of the Great Western Railway of Colorado to serve Vesta's Blade Factory. Responsibilities included rail design, utility coordination, PUC applications for two at-grade crossings, and contractor coordination.

12 miles second main, Bayard to Winters, Nebraska

Currently developing construction plans for 12 miles of second main track for the BNSF, which includes nine bridges. Cassie is responsible for the track design, oversight of drainage, stormwater and bridge designs, coordination of topographic and geotechnical surveys, and completion of construction plans and bid documents.

Hobson Yard Fueling Tracks, Lincoln, Nebraska

Supervised and assisted design team in preparation of construction plans for the new fueling tracks for the BNSF.

18 miles of Third Main Track, Walker, Wyoming

Supervised and assisted design team in construction of third main track from Bill to Walker, Wyoming for BNSF. This project consisted of design and construction involving grading, drainage structures, track, and signal work.

BNSF Alliance Yard Tracks, Alliance, Nebraska

Supervised and assisted in design and construction of holding tracks involving grading, drainage structures, and track work.

BNSF Angora Bypass Project

Assisted and supervised the preliminary horizontal and vertical layouts and estimate for 26 miles of trackage including Phase II and Phase III engineering.

Cassandra Gouger, PE
Transportation Engineer

Second Main Track, Whitman, Nebraska

Supervised and assisted design team in preparation of construction plans for 13 miles of second main track for the BNSF. Work included specifically the upgrade from single main to two mains.

Second Main Track, Messler, Missouri

Supervised and assisted design team in preparation of construction plans for 10 miles of second main track for the Union Pacific Railroad Company from Dexter to Paront and Ardeola to Messler, MO. Work included specifically the upgrade from single track to double track.

150 miles of New Track for BNSF, Peabody and Western Coal in Arizona

Performed preliminary engineering for 150 miles of new track to connect BNSF to Peabody & Western Coal in Arizona.

Gillette Second Main Track Project, Gillette, Wyoming

Supervised and assisted design team in preparation of construction plans, specifications, and construction management for the upgrade of 5 miles of track for the BNSF in Gillette, Wyoming. Work included specifically the upgrade from single track to double track.

3 miles of Second Main, Campbell, Wyoming

Supervised and assisted design team in preparation of construction plans and specifications for the upgrade of 3 miles of second main line extension for the BNSF in Campbell, Wyoming.

Stampede Pass Project (WCRC Portion), Washington

Supervised and assisted design team in preparation of construction plans, specifications, and construction management for the upgrade of 130 miles of track for the BNSF from Cle Elum to Pasco, Washington. Work included six siding extensions and four buildings (remodels or new construction), along with construction inspection.

Hobson Industrial Spur Realignment, Lincoln, Nebraska

Supervised and assisted design team in preparation of construction plans for the realignment of multiple yard tracks.

Railroad Engineer Testimony

Member of team which prepared expert engineering testimony for ten ICC and STB Stand Alone Railroad rate reasonable cases. Seven were completed for BNSF and three for BNSF's predecessors (Burlington Northern Railroad and Atchison, Topeka and Santa Fe).

Confidential Preliminary Engineering / Route Selection / Feasibility Study in the Rocky Mountain Region

Project Engineer for preliminary horizontal and vertical layout and estimate for 42 miles of trackage for an independent company.

Confidential Preliminary Engineering / Route Selection / Feasibility Study in the Rocky Mountain Region

Project Engineer for preliminary horizontal and vertical layout and estimate for 220 miles of trackage for an independent company.

Cassandra Gouger, PE
Transportation Engineer

Second Main, Napier, Missouri

Supervised and assisted design team in preparation of construction plans and specifications for the upgrade of 6 miles of track from Napier to south of Forest City, MO. Work included extension of several existing sidings to double track for the project length

Construction Inspection

Construction inspection of a 17.8 miles rail spur and loop track project to serve AECI power plant at Thomas Hill, MO. This project consisted of design and construction involving grading, drainage structures, track and signal work

12 Miles of Second Main, Cocolalla, Idaho

Design engineer for 12 miles of second main track from Athol to Cocolalla, ID. This project consisted of design and construction involving grading, drainage structures, track, signal work and upgrade of existing sidings

Yard Expansion, Alliance, Nebraska

Supervised and assisted design team in preparation of construction plans and specifications for the extension of multiple yard tracks

CSX 59th Street Intermodal Yard, Chicago, Illinois

Assisted in yard layout and design. Responsibilities included drainage, grading, and facilities for this design build project

5 Mile Spur, Wyoming

Project Engineer for a 5-mile spur from Lysite, Wyoming to Lost Cabin Gas Plant. Completed preliminary and final design plans

Highway / Interchange Design

Broadway Viaduct Replacement, Denver, Colorado

The Broadway Viaduct carries 190,000 vehicles per day across Broadway, RTD's light rail facilities into Denver, and the consolidated heavy rail lines of the Union Pacific and Burlington Northern Railroads in south-central Denver. Of great concern to the Colorado Department of Transportation was the drop in the viaduct's structural sufficiency from 45 to 23 in one year. Spalling concrete, exposed rebar, and other ailments led to the rating. Repairs or replacement of the viaduct became ever more important. The FHU team conducted a condition survey of the structure and recommended replacement, followed with a structure selection study, and produced plans for replacement. Ms. Gouger assisted in and managed plan production activities for Phase 1B construction with the assistance of 3 subconsultants.

SH 119 Widening, City of Black Hawk, Colorado

After FHU completed the Comprehensive Transportation Plan for the City of Black Hawk, FHU also completed preliminary and final designs of widening various sections along SH 119 according to this plan. Cassie completed the final design and plan production of SH 119 widening from Mill to Richman Streets and preliminary design of SH 119 widening from Gregory to the city's proposed facilities at the existing post office site.

Cassandra Gouger, PE
Transportation Engineer

Studies / Planning

CDOT Railroad Relocation Implementation Study

CDOT is conducting a study to develop a rail alternative to eliminate the through train movements from Denver to Pueblo. Cassie is the Team Leader for Rail, which is responsible for alternatives analysis and cost estimating for rail alignments to bypass the Denver metropolitan area.

North Meadows Drive Extension, Castle Rock, Colorado

Cassie has been responsible for developing roadway alternatives for the extension of North Meadows Drive to Interstate 25, via US 85 for the Town of Castle Rock. She was responsible for designing the roadway according to applicable standards and speed restrictions, and estimating costs for inclusion in the North Meadows Extension to US 85 and I-25 System Level Study, December 2006. This project has progressed into an Environmental Assessment, which Cassie will continue her role as designer of alternatives and analysis.

Valley Highway Environmental Impact Statement, Denver, Colorado

The project consisted of producing an Environmental Impact Statement along the I-25 corridor from Logan Street to 6th Avenue Interchange, and along 6th Avenue from I-25 to Federal. Cassie was responsible for the design alternatives analysis.

Miscellaneous

Titan Road Grade Separation, Douglas County, Colorado

The condition at US 85 and Titan Road consisted of an intersection and two at grade railroad crossings, Union Pacific (UPRR) and Burlington Northern and Santa Fe (BNSF), approximately 750' apart. Colorado Department of Transportation determined that US 85 and Titan Road would become grade separated, which eliminated the at grade railroad crossing with BNSF. This kept the at grade railroad crossing with UPRR intact. UPRR along with Douglas County decided to team in eliminating the at grade crossing. The FHU team coordinated with both agencies to determine the preferred alternative for grade separation, submitted PUC application, produced construction documents. Ms. Gouger completed railroad coordination, PUC application, roadway design and managed the plan production activities.



Stephanie Sangaline, PE

Project Manager

Education

B S., Civil Engineering, Colorado School of Mines, 1989

Professional Affiliations

American Society of Civil Engineers
Association of State Floodplain Managers
International Erosion Control Association

Registration

Professional Engineer—Colorado

Background

Ms. Sangaline has 18 years of experience including agency coordination and permit application preparation for environmental hydraulic elements associated with projects which include bridges, drainageways, waterway/canal relocations, structure replacement projects, and the like. Coordination of field personnel, collection of appropriate data, and compilation of information into the necessary permit applications and/or reports for submittal to appropriate jurisdictions. Agency and jurisdictional coordination includes project and on-site meetings, public meetings, and property owner meetings as appropriate

Project Experience

BNSF Guernsey Tunnel #2 Daylighting/Extension of Stokes Siding: Environmental Assessment and Design Project., Guernsey, Wyoming

Project Manager responsible for coordination of an Environmental Assessment associated with the daylighting of an existing railroad tunnel near Guernsey Reservoir in Wyoming. The project location was adjacent to the Guernsey State Park and required coordination with several agencies including the Bureau of Reclamation, Army Corps of Engineers, Fish & Wildlife, Wyoming Game and Fish, Division of State Parks & Historic Sites, Division of Cultural Resources, Division of Parks & Cultural Resources and three different Native American Liaison representatives for the ultimate signing of a Memorandum of Agreement between the client and agencies

Other Railroad Experience

- Railroad Spur Drainage & Sediment/ Erosion Control Design, Lysite, Wyoming
- Miscellaneous Bank Stabilization/Emergency Permitting Projects for BNSF Yellowstone, Rosebud, Treasure, Custer and Carbon Counties, Montana
- BNSF Wetland Drainage Bank Stabilization, Stanton, North Dakota
- Siding Extension Impact Assessment, Pierce & Eagles Nest, North Dakota
- Norway to Natck Double Main Project, Norway to Natck, Nebraska
- BNSF Parallel Main Track Wetland Assessment/Stormwater Management Hingham to Buelow, Montana
- BNSF Stormwater Management/Wetland Evaluation for Siding Extension Project Careywood to Athol, Idaho
- BNSF Stormwater Management/Wetland Evaluation and Permitting, Campbell Siding Extension, Campbell, WY
- BNSF Stormwater Management/Wetland Evaluation and Permitting, Gillette Siding Extension, Gillette, WY
- BNSF Firth Line Change – Wetland Evaluation and Stormwater Management, Firth Nebraska
- BNSF Siding Extension Project Permitting, Napier, Missouri
- BNSF Siding Extension Project Permitting, Parkville, Missouri
- Washington Central Railroad Stampede Pass Siding Extensions, Pascoe to Cle Elum, Washington